

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 385
SENATE BILL 187

AN ACT TO AMEND AND TO CORRECT OMISSIONS AND INTERNAL
INCONSISTENCIES IN CHAPTER 159B OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. All references in this act to portions of Chapter 159B of the General Statutes refer to Chapter 159B as it appears in Volume 3D (1976 Replacement Volume) of the General Statutes.

Sec. 2. G.S. 159B-4 is hereby amended by rewriting the first paragraph thereof to read as follows:

"In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the State jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with joint agencies created pursuant to this Chapter, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate."

Sec. 3. G.S. 159B-9 is hereby amended by rewriting the third paragraph of subsection (a) to read as follows:

"If each governing board shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. The governing board of the municipality shall thereupon by ordinance or resolution appoint one commissioner of the joint agency who may, at the discretion of the governing board, be an officer or employee of the municipality."

Sec. 4. G.S. 159B-9(c) is hereby rewritten to read:

"(c) The joint agency shall consist of a board of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes."

Sec. 5. G.S. 159B-10 is hereby rewritten to read as follows:

"§ 159B-10. **Executive committee, composition; powers and duties; terms.** — The board of commissioners of a joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall have and shall exercise such of the powers and authority of the board of commissioners during the intervals between the board's meetings as shall be prescribed in the board's rules, motions and resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the joint agency."

Sec. 6. G.S. 159B-11(10) is hereby rewritten to read as follows:

"(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;"

Sec. 7. G.S. 159B-11(12) is hereby rewritten to read as follows:

"(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to an agency created pursuant to this act unless the legislature shall specifically so state;"

Sec. 8. G.S. 159B-11(13) is hereby rewritten to read as follows:

"(13) To dispose of by private negotiated sale or lease, or otherwise an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this act unless the legislature shall specifically so state;"

Sec. 9. G.S. 159B-11(16) is hereby rewritten to read as follows:

"(16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;"

Sec. 10. G.S. 159B-11 is hereby amended by renumbering subparagraph (20) of the first paragraph thereof from number (20) to number (21) and by substituting therefor a new paragraph (20) to read as follows:

"(20) To purchase power and energy and related services from any source on behalf of its members and other customers and to sell the same to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners of the joint agency shall determine;"

Sec. 11. G.S. 159B-13 is hereby rewritten to read as follows:

"§ 159B-13. Sale of excess capacity and output by a joint agency. — A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any municipality in this State or any other state owning electric distribution facilities, to any political subdivisions, agencies or instrumentalities of any other state, to other joint agencies created pursuant to this Chapter, to any electric membership corporation or public utility authorized to do business in this State, or to any other state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve sharing agreements; provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government."

Sec. 12. G.S. 159B-27 is hereby amended to read as follows:

"§ 159B-27. Taxes: payments in lieu of taxes. — (a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the State Board of Assessment. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to six percent (6%) of that percentage of all monies expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it

to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) Each joint agency shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to six percent (6%) of the gross receipts from sales of electric power and energy, less, however, such amounts as such joint agency pays for the purchase of electric power and energy from vendors taxed on such amounts under G.S. 105-116 and less amounts sold to any other person, firm or corporation engaged in selling such commodities or services to the public for which taxes are paid to this State.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three percent (3%) of all monies expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three percent (3%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes."

Sec. 13. G.S. 159B-35 is hereby amended by rewriting the last sentence thereof to read:

"Nothing in this Chapter shall be construed to authorize the issuance of bonds for the purpose of financing facilities to be owned exclusively by any private corporation."

Sec. 14. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 13th day of May, 1977.