

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 574
HOUSE BILL 942

AN ACT RELATING TO MUNICIPALITIES AND PROCEDURES FOR THE
OPERATION AND FINANCING OF JOINT MUNICIPAL POWER AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-4 is amended as follows:

(1) The first paragraph is rewritten to read:

"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 jointly or severally plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain a project situated within or without the State with one or more other municipalities in this State owning electric distribution facilities or any political subdivisions, agencies or instrumentalities of any state contiguous to this State or joint agencies created pursuant to this Chapter or any persons, firms, associations or corporations, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within the State or any state contiguous to the State, 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."

(2) The first sentence of the second paragraph is rewritten to read:

"Prior to acquiring any such project the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24."

Sec. 2. G.S. 159B-5 is amended as follows:

(1) The first paragraph is rewritten to read:

"Each municipality shall own a project in proportion to the amount of the money furnished or the value of property or other consideration supplied by it for the planning, development, acquisition or construction thereof, and shall be entitled to a percentage share of the output and capacity therefrom equal to such ownership proportion in such project."

(2) The second paragraph is rewritten to read:

"Each municipality shall be severally liable for its own acts and not jointly or severally liable for the acts, omissions or obligations of others, and no money or property or other consideration supplied by any municipality shall be credited or otherwise applied to the account of any other municipality, nor shall the share of any municipality in a project be charged directly or indirectly with any debt or obligation of any other municipality or be subject to any lien as a result thereof. The acquisition of a project shall include, but shall not be limited to, the purchase or lease of an existing, completed project and the purchase of a project under construction. A municipality participating in the joint or several planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation or maintenance of any project under this Chapter may furnish money derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both, and provide property, both real and personal, services and other considerations."

(3) The first sentence of the third paragraph is rewritten to read:

"Any contracts entered into by municipalities with respect to ownership in a project shall contain such terms, conditions and provisions, not inconsistent with the provisions hereof, as the governing boards of the municipalities shall deem to be in the interests of the municipalities."

Sec. 2.1. G.S. 159B-5(6) is rewritten to read:

"(6) Provisions relating to alienation and prohibiting partition of a municipality's interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition;".

Sec. 2.2. G.S. 159B-5(7) is rewritten to read:

"(7) Provisions for the construction of a project, which may include the determination that one participating municipality or any person, firm or corporation may construct the project as agent for all the parties;".

Sec. 2.3. G.S. 159B-5(8) is rewritten to read:

"(8) Provisions for the operation and maintenance of a project, which may include the determination that one participating municipality or any person, firm or corporation may operate and maintain the project as agent for all the parties;".

Sec. 2.4. G.S. 159B-5(9) is rewritten to read:

"(9) Provisions for the creation of a committee of representatives of the participating municipalities with such powers of supervision of the construction and operation of the project as the contract, not inconsistent with the provisions of this Chapter, may provide;".

Sec. 2.5. The first sentence of the last paragraph of G.S. 159B-5 is rewritten to read:

"For the purpose of paying its respective share of the cost of a project or projects, a municipality may issue its bonds as provided in this Chapter, and, notwithstanding the provisions of any other law to the contrary, may secure the payment of the principal of, premium, if any, and interest on such bonds by a lien and charge on all, or any portion of, the revenue derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission, or distribution of electric power or energy or its interests in any project or projects, or a combination of such revenues."

Sec. 2.6. G.S. 159B-5 is amended by adding the following paragraphs at the end:

"In connection with any project undertaken pursuant to this Chapter, a municipality shall have all of the rights and powers granted to a joint agency by subdivisions (12) and (13) of G.S. 159B-11.

Notwithstanding the provisions of any other law to the contrary, any contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided."

Sec. 3. G.S. 159B-9(c) is amended by adding the following provision to the end thereof:

"The offices of commissioner, alternate commissioner, or officer of a joint agency are hereby declared to be offices which may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute."

Sec. 4. G.S. 159B-11(3) is rewritten to read:

"(3) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;".

Sec. 4.1. G.S. 159B-11(19a) is rewritten to read:

"(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to 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. 5. G.S. 159B-12 is amended as follows:

(1) The second paragraph of G.S. 159B-12 is rewritten to read:

"Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation. Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project, or of any contracts with respect to the purchase or disposition of power and energy and services and facilities related to the utilization of power and energy, shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality

or political subdivision thereof except as in this Chapter specifically required and provided."

(2) The first sentence of the third paragraph of G.S. 159B-12 is rewritten to read: "Payments by a municipality under any contract for the purchase of capacity, output, or power or energy or services and facilities related to the utilization of power and energy, from a joint agency shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract."

Sec. 6. The first sentence of G.S. 159B-14 is rewritten to read:

"A joint agency may issue its bonds pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or contributions or advances from its members."

Sec. 7. The seventh sentence of G.S. 159B-15(a) is rewritten to read:

"The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent."

Sec. 7.1. G.S. 159B-15 is amended by adding a new subsection to read:

"(a1) Notwithstanding anything in this Chapter to the contrary, in the case of short-term notes or other obligations (including commercial paper) maturing not later than one year from their date or dates, the Local Government Commission of North Carolina and the issuer (i) may authorize officers or employees of either or both thereof to fix principal amounts, maturity dates, interest rates or methods of fixing interest rates, interest payment dates, denominations, redemption rights of the issuer or holder, places of payment of principal and interest, and purchase prices of any such notes or other obligations, to sell and deliver any such notes in whole or in part at one time or from time to time, and to fix other matters and procedures necessary to complete the transactions authorized, all subject to such limitations as may be prescribed by the Local Government Commission with the approval of the issuer, (ii) may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase notes or other obligations and any other transactions to provide security to assure, timely payment of notes or other obligations, (iii) may employ one or more persons or firms to assist in the sale of the notes or other obligations and appoint one or more banks, trust companies or any dealer in notes or other obligations, within or without the State, as depository for safekeeping and as agent for the delivery and payment of the notes or other obligations, and (iv) may provide for the payment of fees and expenses in connection with the foregoing either from the proceeds of the notes or other obligations or from other available funds."

Sec. 8. G.S. 159B-16(1) is rewritten to read:

"(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, financed by the bonds, or from the electric system or facilities of a municipality or a joint agency."

Sec. 9. The first sentence of G.S. 159B-17(b) is rewritten to to read:

"A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects or otherwise as authorized by this Chapter."

Sec. 10. G.S. 159B-27(a) is amended by adding the following sentence at the end:

"Any administrative building and associated land shall be deemed a project for purposes of this paragraph."

Sec. 11. If any portion of this act is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remainder of the act.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of June, 1983.