

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 412
HOUSE BILL 556

AN ACT TO ENABLE JOINT MUNICIPAL POWER AGENCIES TO EFFECT
CORPORATE REORGANIZATION AND TO MAKE TECHNICAL CHANGES
TO THE STATUTES GOVERNING JOINT MUNICIPAL POWER AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-2 reads as rewritten:

"§ 159B-2. Legislative findings and purposes.

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for

their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants.

In addition to the authority granted municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities by Article 2 of this Chapter and the other powers granted in said Article 2, and in addition and supplemental to powers otherwise conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable for the State of North Carolina to authorize municipalities and joint agencies to form joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, and to empower joint agencies authorized herein to provide aid and assistance to municipalities or joint municipal assistance agencies in the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchase power options, and in the development, construction and operation of supply-side and demand-side resources, in addition to exercising such other powers as hereinafter provided to joint municipal assistance agencies and joint agencies. In order to provide maximum economies and efficiencies to municipalities and the consuming public in the generation and transmission of electric power and energy contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more ~~municipalities~~, municipalities or joint agencies, as requested, with respect to the construction, ownership, maintenance, expansion and operation of their electric systems; and that the joint agencies authorized herein be empowered to act as provided in Article 2 of this Chapter and that such ~~agency or joint~~ agencies be empowered to act for and on behalf of any one or more municipalities or joint municipal assistance agencies, in each case as requested, with respect to the integrated resource planning and development, construction, and operation of supply-side and demand-side options described above."

Sec. 2. G.S. 159B-3 reads as rewritten:

"§ 159B-3. Definitions.

The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

- (1) 'Bonds' shall mean ~~electric~~-revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this Chapter and shall include refunding bonds.

- (2) 'Cost' or 'cost of a project' shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency (provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load); establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation. The term shall also mean the capital cost of ~~nuclear~~-fuel for any project.
- (2a) 'Electric system' shall mean any electric power generation, transmission or distribution system.
- (3) 'Governing board' shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality, joint agency, or joint municipal assistance ~~agency~~-agency, including any executive committee created pursuant to G.S. 159B-10.
- (4) 'Joint agency' shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 2 of this Chapter.
- (4a) 'Joint municipal assistance agency' shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 3 of this Chapter.
- (5) 'Municipality' shall mean a city, town or other unit of municipal government created under the laws of the State, or any board, agency, or commission thereof, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.
- (6) 'Project' shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise. Project does not mean an administrative office

building or office or facilities related to the administrative office
building or office.

(7) 'State' shall mean the State of North Carolina."

Sec. 3. G.S. 159B-4 reads as rewritten:

"§ 159B-4. Authority of municipalities to jointly cooperate.

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 Chapter or, in the case of projects for the generation and transmission of electric power and energy, jointly with 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 this 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.

Prior to acquiring any ~~such~~ generation 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. In determining the future power requirements of a municipality, there shall be taken into account the following:

- (1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation ~~and transmission~~ of electric power and energy;
- (2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
- (3) The estimated useful life of such project;
- (4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
- (5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a generation project unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

Sec. 4. G.S. 159B-8 is repealed.

Sec. 5. G.S. 159B-9 reads as rewritten:

"§ 159B-9. Creation of a joint agency; board of commissioners.

(a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

- (1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;
- (2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;
- (3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and
- (4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

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.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(b) After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159B-9, and authorizing said municipality to participate, and with the unanimous consent of the members of the joint

agency evidenced by the resolutions of their respective governing bodies. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

(c) The powers of a joint agency shall consist of a board be exercised by or under the authority of, and the business and affairs of a joint agency shall be managed under the direction of, its board of commissioners. However, all or a portion of those powers and the management of all or any part of the business and affairs of a joint agency may be exercised by an executive committee created pursuant to G.S. 159B-10. The board of commissioners shall consist 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~~ the commissioner 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. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing body by which ~~he is~~ that commissioner was appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. 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.

(d) The board of commissioners of the joint agency shall annually elect one of the commissioners as chairman, another as vice-chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant ~~secretary~~. secretary and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or assistant secretary. The board of

commissioners may also appoint such additional officers as it deems necessary. The secretary or any assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(e) A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution ~~shall~~ may take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

(f) No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties."

Sec. 6. G.S. 159B-10 reads as rewritten:

"§ 159B-10. Executive committee, composition; powers and duties; terms.

~~The board of commissioners of the 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.~~

(a) The board of commissioners of a joint agency may create an executive committee by resolution. The board may provide for the composition and terms of office of, and the method of filling vacancies on, the executive committee. The executive committee may include representatives of the joint agency, representatives of any other joint agency, and any other persons. The executive committee of a joint agency may simultaneously act as the executive committee of any other joint agency or agencies, or joint municipal assistance agency or agencies, if so provided by all such entities, and also may simultaneously act as the sole governing board of any joint municipal assistance agency created by two or more joint agencies pursuant to G.S. 159B-45 if so provided by all such joint agencies. An executive committee acting as the

sole governing board of a joint municipal assistance agency shall not be subject to the limitations on the powers and authority of executive committees set forth in subsection (b) of this section.

(b) Except as limited by resolution of the board of commissioners creating an executive committee and except as otherwise provided in this subsection, an executive committee shall have and shall exercise all of the powers and authority of the board of commissioners creating the executive committee. However, the executive committee shall not have the power or authority to (i) amend any resolution of the board of commissioners of the joint agency relating to the creation of the executive committee or providing for its powers or authority; or (ii) adopt or amend a budget. Any rate for a joint agency adopted by an executive committee may be rejected, within 30 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. In the event that any rate is rejected in this manner, the executive committee shall, within 10 days following the action on the part of the commissioners, adopt a second rate for that joint agency, which may be the same rate as previously adopted. This second rate may be rejected, within 10 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. If a second rate adopted by the executive committee is rejected in this manner, the board of commissioners of the affected joint agency shall, acting by weighted vote, adopt a rate for the joint agency which is sufficient at least to comply with the requirements of G.S. 159B-17(b). No such rate adopted by the executive committee shall become effective so long as it is subject to rejection by commissioners of a joint agency as provided for in this subsection. However, if the executive committee determines that the establishment of a rate is required within 50 days to enable a joint agency to satisfy the requirements of G.S. 159B-17(b), the rate adopted by the executive committee shall be effective until changed by the executive committee or board of commissioners in accordance with this subsection.

(c) Each member of the executive committee shall have one vote and shall serve at the pleasure of the governing board by which the member was appointed. Before performing duties as a member, each member shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of the office faithfully and impartially, and a record of each oath shall be filed with the governing board appointing the member and spread upon its minutes. The office of a member of an executive committee 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 law.

(d) The executive committee shall annually elect from its membership a chair and vice-chair, and shall elect another person or persons, who need not be members, to serve as secretary and, if desired, assistant secretary. The secretary or any assistant secretary of the executive committee shall keep a record of the proceedings of the executive committee, and the secretary shall be the custodian of all records, books, documents, and papers filed with the executive committee, as well as the minute book or journal of the executive committee. Either the secretary or the assistant secretary of

the executive committee may cause copies to be made of all minutes and other records and documents of the executive committee and may give certificates of the executive committee to the effect that the copies are true copies, and all persons dealing with the executive committee may rely upon those certificates.

(e) A majority of the members of an executive committee then serving shall constitute a quorum. A vacancy on the executive committee shall not impair the right of a quorum to exercise all the rights and perform all the duties of the executive committee. Any action taken by the executive committee under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. A vote of the majority of the members present shall be necessary and sufficient to take any action or to pass any resolution, provided that those members present are entitled to cast a majority of the votes of all members of the executive committee.

(f) Members of the executive committee, and of any subcommittee created by the executive committee, may receive compensation and be paid expenses for the performance of their duties as determined by the board or boards of commissioners creating that executive committee. However, for any member of an executive committee who is an employee of a municipality, a payment in lieu of any compensation shall be made to the municipality for distribution to the executive committee member in the manner and amount, if any, it deems appropriate. An executive committee for more than one entity may be referred to as a board of directors of any or each of those entities."

Sec. 7. G.S. 159B-11 reads as rewritten:

"§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

- (1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To acquire and maintain an administrative office 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~~: determined;
- (4) To sue and be sued in its own name, and to plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

- (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
- (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation ~~awards.~~ awards;
- (9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;
- (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 available funds of ~~made available to~~ the joint agency; no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so state;
- (11) To authorize the construction, operation or maintenance of any project or projects by any person, ~~firm or corporation, including political subdivisions and agencies of any state, or of the United States;~~ firm, association, or corporation, public or private;
- (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 or joint agencies 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 any agency created pursuant to this Chapter unless the legislature shall specifically so state;

- (13) To dispose of by private negotiated sale or lease, or ~~otherwise~~ otherwise, an existing project, project or 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 Chapter unless the legislature shall specifically so state;
- (14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any ~~project; project or activity permitted in this Chapter;~~
- (15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;
- (16) To negotiate and enter into contracts for the purchase, ~~sale, sale for resale only,~~ 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; any person, firm, association, or corporation, public or private;~~
- (17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, ~~corporations and others; associations, or corporations, public or private;~~

- (18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper ~~agency~~agency, for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects and undertake other activities permitted in this Chapter in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;
- (19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;
- (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 governing board ~~of commissioners~~ of the joint agency shall determine;
- (19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchased power options, and related to the development, construction and operation of supply-side and demand-side resources, and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and functions; and
- (20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency ~~therein~~in this Chapter.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members.

Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such generation project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

- (1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation ~~and transmission~~ of electric power and energy;
- (2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;
- (3) The estimated useful life of such project;
- (4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;
- (5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

Sec. 8. G.S. 159B-12 reads as rewritten:

"§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a joint agency.

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy for its present or future requirements, including the capacity and output of one of more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise,

and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality. 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 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. Any municipality may contract with a joint agency, or may contract indirectly with a joint agency through a joint municipal assistance agency, to implement the provisions of G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary, including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint agency and a municipality or a joint municipal assistance agency (or between a municipality and a joint municipal assistance agency) to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply side and demand side resources, and any contract providing for payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) or by any joint municipal assistance agency to any joint agency for the provision of aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply side and demand side resources, implement the provisions of G.S. 159B-11(19b) may extend for a period not exceeding 30 years; provided, that any such contract in respect of a capital project to be used by or for the benefit of a municipality shall be subject to the prior approval of the Local Government Commission of North Carolina. In reviewing any such contract for approval, said Local Government Commission shall consider the municipality's debt management procedures and policies, whether the municipality is in default with respect to its debt service obligations and such other matters as said Local Government Commission may believe to have a bearing on whether the contract should be approved. 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, or of any contracts with a municipality or joint municipal assistance agency to provide aid~~

~~and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply side and demand side resources;~~

Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any contracts authorized by this section 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.

~~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, and payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) under any contract or contracts to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply side and demand side resources, authorized by this section 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. A municipality or joint agency, pursuant to an agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, activities permitted in this Chapter, facilities and commodities sold, furnished or supplied through its—the electric system of the municipality sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.~~

Payments by any joint municipal assistance agency to any joint agency under any contract or contracts to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply side and demand side resources, contracts authorized by this section, shall be made solely from the sources specified in such contract or contracts and no other, and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint municipal assistance agency or upon any of its income, receipts, or revenues, except such sources so specified, or upon any property of any municipality with which the joint agency or joint municipal assistance agency contracts or upon any of such municipality's income, receipts, or revenues except the revenues of such municipality's electric system. in each case except such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge and collect rents, rates, fees, and charges for providing aid and

assistance sufficient to provide revenues adequate to meet its obligations under such contract.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency."

Sec. 9. G.S. 159B-13 reads as rewritten:

"§ 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.~~ person, firm, association, or corporation, public or private."

Sec. 10. G.S. 159B-14 reads as rewritten:

"§ 159B-14. Bonds of a joint agency.

A joint agency may issue bonds for the purpose of paying the cost of a project and secure both the principal of and interest on the bonds by a pledge of part or all of the revenues 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 from other activities or facilities permitted in this Chapter, or from contributions or advances from its members. A joint agency may issue bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by a pledge of revenues, solely by a security interest in real or personal property, or by both a pledge of revenues and a security interest in real or personal property. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes."

Sec. 11. G.S. 159B-15 reads as rewritten:

"§ 159B-15. Issuance of bonds.

(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on bonds issued to pay the cost of a project shall be payable solely from revenues. Bonds that are not issued to pay the cost of a project shall be payable from revenues, from property pledged as security for the bonds, or from both.

The bonds of each issue shall bear interest at such rate or rates as may be determined or provided for by the Local Government Commission of North Carolina with the approval of the issuer, provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate-issuer. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. 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. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and subsequently ~~resold in accordance with the provisions of this Chapter.~~ resold.

(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, bonds, to sell and deliver any such notes bonds 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 bonds and any other transactions to provide security to assure, timely payment of notes or other obligations bonds, (iii) may employ one or more persons or firms to assist in the sale of the notes or other obligations bonds and appoint one or more banks, trust companies or any dealer in notes or other obligations bonds, within or without the State, as depository for safekeeping and as agent for the delivery and payment of the notes or other obligations bonds, 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 bonds or from other available funds.~~

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in G.S. 159B-24 of this Chapter, the consent of the State or of any political subdivision, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same."

Sec. 12. G.S. 159B-16 reads as rewritten:

"§ 159B-16. Resolution or trust agreement.

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

- (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, or from other services or activities permitted in this Chapter, or from contributions and advances from members of a joint agency, or from the electric system or other facilities of a municipality or a joint agency.

- (2) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency.
- (3) The setting aside of reserves and the investment, regulation and disposition thereof.
- (4) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.
- (5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.
- (6) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.
- (7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.
- (8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this Chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.
- (9) The preparation and maintenance of a budget.
- (10) The retention or employment of consulting engineers, independent auditors, and other technical consultants.
- (11) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.
- (12) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.
- (13) Provisions for insurance and for accounting reports and the inspection and audit thereof.
- (14) The continuing operation and maintenance of the ~~project~~ project or other facilities.
- (15) For bonds that are not issued to pay the cost of a project, the pledge, assignment, mortgage, or grant of a security interest in any real or personal property or interest in real or personal property, including the pledge, assignment, or grant of a security interest in money, rents, charges, or other revenues or proceeds derived by the joint agency from the sale of property, from insurance, or from a condemnation award. In the event of default on a bond secured by a pledge,

assignment, mortgage, or grant of a security interest, the rights of the bond holders and the liabilities arising from the default shall be limited, except to the extent provided in a pledge of revenues, to the specific property or interest in property pledged, assigned, or mortgaged or in which a security interest was granted to secure the bonds, and no claim for any deficiency shall be made nor any deficiency judgment entered as a result of the pledge, assignment, mortgage, or grant of a security interest in the property or the interest in property."

Sec. 13. G.S. 159B-17 reads as rewritten:

"§ 159B-17. Revenues.

(a) A municipality 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 electric system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued to finance additions, improvements and betterments to its electric system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract.

(b) 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. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

(c) Any pledge of revenues, securities or other moneys made by a municipality, joint agency or joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality, joint agency or joint municipal assistance agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and

the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality, joint agency or joint municipal assistance agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge of revenues, securities or other moneys is created need not be filed or recorded in any manner."

Sec. 14. G.S. 159B-18 reads as rewritten:

"§ 159B-18. Trust funds; investment authority.

(a) Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall ~~act as trustee of such moneys and shall hold and~~ apply the same for the purposes hereof, subject to such regulation as this Chapter and such resolution or trust agreement may provide.

(b) Any moneys received pursuant to the authority of this Chapter and any other moneys available to a joint agency for investment may be invested:

(1) As provided in subsection (a) of this section;

(2) As provided in G.S. 159-30, except that:

a. A joint agency may also invest, in addition to the obligations enumerated in G.S. 159-30(c)(2), in bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America.

b. For purposes of G.S. 159-30(c)(12), a joint agency may also enter into repurchase agreements with respect to, in addition to the obligations enumerated in G.S. 159-30(c)(12):

1. Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, and the United States Postal Service;

2. Bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal

- of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America;
3. Mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;
 4. Direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and
 5. Direct or indirect obligations, trust certificates, or other similar instruments which are both: (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates; and (iii) for purposes of the second proviso of G.S. 159-30(c)(12)a., the financial institution serving either as trustee or as fiscal agent for a joint agency holding the obligations subject to the repurchase agreement may also be the provider of the repurchase agreement if the obligations that are subject to the repurchase agreement are held in trust by the trustee or fiscal agent for the benefit of the joint agency;
- (3) In mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;
 - (4) In direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and
 - (5) In direct or indirect obligations, trust certificates, or other similar instruments which are (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation,

or the Federal National Mortgage Association, and (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates."

Sec. 15. G.S. 159B-24 reads as rewritten:

"§ 159B-24. Approval and sale of bonds.

Prior to the acquisition or the commencement of construction of any project consisting of a system or facilities for the generation of power and energy which is to be financed by the issuance of bonds under the provisions of this Chapter, the participating municipalities or joint agency, as the case may be, shall first obtain a certificate of public convenience and necessity and, in the same proceeding, the approval required by G.S. 159B-4 hereof, in the case of the participating municipalities, or the approval required by G.S. 159B-11 hereof, in the case of a joint agency, from the North Carolina Utilities Commission under such rules, regulations and procedures as the Commission may prescribe.

No municipality or joint agency shall issue any bonds pursuant to this Chapter unless and until, and only to the extent that, the issuance of such bonds is approved by the Local Government Commission. A participating municipality or joint agency shall file with the secretary of the Local Government Commission an application for Commission approval of the issuance of the bonds upon such form as the said Commission may prescribe, which form shall provide for the submission of such information as the secretary may require concerning the proposed bond issue, the details thereof and the security therefor. Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the details of the proposed issue and the security therefor.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the municipality or joint agency in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the municipality or joint agency, as the case may be, has complied with the requirements of this section with respect to the filing of an application for approval by the said Local Government Commission.

In determining whether a proposed bond issue shall be approved, the Commission may consider:

- (1) The municipality's or joint agency's debt management procedures and policies.
- (2) Whether the municipality or joint agency is in default with respect to any of its debt service obligations.
- (3) Whether, based upon feasibility reports submitted to it, the probable revenues of the project to be financed or the revenues of the

municipality's electric system, as the case may be, will be sufficient to service the proposed bonds.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved except matters which are expressly required by the provisions of this Chapter to be determined by the North Carolina Utilities Commission.

The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

- (1) That, based upon engineering studies and feasibility reports submitted to it, the principal amount of the proposed bonds will be adequate and not excessive for the proposed purpose of the issue.
- (2) That the municipality's or joint agency's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
- (3) That the requirements of this Chapter with respect to the issuance of the bonds and the details thereof and security therefor have been, or will be, satisfied.
- (4) That the issuance of the proposed bonds will effectuate the purposes and policies of this Chapter.

After considering an application, the Local Government Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

If the Commission enters an order denying the application, the proceedings under this section shall be at an end.

At any time after the Commission approves an application for the issuance of bonds, the governing board of the issuer may adopt a bond resolution or enter into a trust agreement in accordance with the provisions of this Chapter, and may thereafter at one time, or from time to time, issue the bonds as provided herein.

Upon the filing with the Local Government Commission of a resolution of the issuer requesting that its bonds be sold, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interest of the issuer and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the issuer.

Except as herein expressly provided, bonds may be issued and sold under the provisions of this Chapter without obtaining the approval or consent of any other department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this Chapter."

Sec. 16. G.S 159B-25 reads as rewritten:

"§ 159B-25. Refunding bonds.

(a) A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the

provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds.

(b) In addition to any refunding bonds that may be issued pursuant to subsection (a), a municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of providing for the payment of any interest accrued or to accrue on any bonds which shall have been issued by the joint agency under the provisions of ~~the~~ this Chapter; provided, however, that the refunding bonds are issued on or prior to June 30, 1992, and the latest maturity of the refunding bonds issued for a project is no later than the latest maturity of any other bonds issued by the municipality or joint agency, as the case may be, then outstanding for the same project; and provided further that the Local Government Commission shall conduct an evidentiary hearing and upon the evidence presented find and determine that:

- (1) The municipality's or the joint agency's debt will be managed in strict compliance with law;
- (2) The requirements of this Chapter with respect to the issuance of its ~~bond~~ bonds and the details thereof and security therefor have been and will be satisfied;
- (3) The estimated revenues of the project or the revenues of the municipality's electric system, as the case may be, will be sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;
- (4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;
- (5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;
- (6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and
- (7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

(c) The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate ~~thereof~~ thereto."

Sec. 17. G.S. 159B-27 reads as rewritten:

"§ 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 Department of

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

(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 three and twenty-two hundredths percent (3.22%) of that percentage of all moneys 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) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(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 and nine hundredths percent (3.09%) of all moneys 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 and nine hundredths percent (3.09%) 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~~ 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. 18. G.S. 159B-29 reads as rewritten:

"§ 159B-29. Dissolution of joint agencies.

Whenever the governing board of commissioners of a joint agency and the governing boards of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, ~~such board of commissioners and the governing boards~~ board of the joint agency may by resolution declare the joint agency to be dissolved. On the effective date of such resolution ~~or ordinance, declaring the joint agency to be dissolved~~, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this Chapter and the bylaws of the joint agency. Notice of such dissolution shall be filed with the Secretary of State."

Sec. 19. G.S. 159B-30.1 reads as rewritten:

"§ 159B-30.1. Additional reports.

Beginning ~~January 1, 1994, March 1, 1996,~~ and annually thereafter, each joint agency operating under the authority of Chapter 159B of the General Statutes shall file a report with the Joint Legislative Utility Review Committee describing the activities of the joint agency carried out pursuant to the authority granted by G.S. 159B-2, 159B-11(19b), 159B-12 and 159B-17(c). The report shall cover the preceding calendar year. Each joint agency shall file such additional reports as the Joint Legislative Utility Review Committee shall request."

Sec. 20. G.S. 159B-34 reads as rewritten:

"§ 159B-34. Liability and defense.

(a) No commissioner or officer of any joint agency or ~~municipality~~ municipality, or member of an executive committee created pursuant to G.S. 159B-10, or person or persons acting in their ~~behalf~~ behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter.

(b) The governing board of commissioners of a joint agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, officer, agent, or employee of the joint agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(c) The governing board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made ~~or~~ in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint agency may purchase insurance coverage for payment of claims or judgments pursuant to this section."

Sec. 21. G.S. 159B-42 reads as rewritten:

"§ 159B-42. Joint municipal assistance agencies.

The purpose of this Article is to authorize joint agencies or municipalities to form one or more joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, to do such other acts and things as

hereinafter provided and to carry out the powers and responsibilities hereinafter granted in this Chapter. It shall also be the purpose of a joint municipal assistance agency to provide aid and assistance to any joint agency in the exercise of its respective powers and functions. The term 'provide aid and assistance' shall be liberally construed."

Sec. 22. G.S. 159B-43 reads as rewritten:

"§ 159B-43. Joint municipal assistance agencies authorized.

(a) Any two or more ~~municipalities~~ joint agencies, or any two or more municipalities, may organize a joint municipal assistance agency, which shall be a public body and body corporate and politic. Any joint agency or municipality is hereby authorized to become a member of any such joint municipal assistance agency upon a determination, by resolution or ordinance of its governing board, that economies, efficiencies and other benefits might be achieved from participation in such an agency.

The resolution or ordinance determining it desirable for a joint agency or municipality to become a member of a joint municipal assistance agency (which need not prescribe in detail the basis for the determination) shall set forth the names of the joint agencies or municipalities which are proposed to be initial members of the joint municipal assistance agency. The governing board of the joint agency or municipality shall thereupon by ordinance or resolution appoint one commissioner and up to two alternate commissioners of the joint municipal assistance agency who may, at the discretion of the governing board, be an officer or employee of the joint agency or municipality. If two alternate commissioners are appointed, the governing board shall designate them as first or second alternate commissioner.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member joint agencies or municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective joint agency or municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint municipal assistance agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint municipal assistance agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint municipal assistance agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint municipal assistance agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint municipal assistance agency, the joint municipal assistance agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate or of any new or supplemental certificate hereinafter provided for, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member joint agencies or municipalities by the Secretary of State. If a commissioner of any such joint agency or municipality has not signed the application to the Secretary of State and such joint agency or municipality does not notify the Secretary of State of the appointment of a commissioner within 60 days after receipt of such notice, such joint agency or municipality shall be deemed to have elected not to be a member of the joint municipal assistance agency. As soon as practicable after the expiration of such 60-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those joint agencies or municipalities which have elected to become members of the joint municipal assistance agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(b) After the creation of a joint municipal assistance agency, any other joint agency (if organized by joint agencies) or municipality (if organized by municipalities) may become a member thereof upon application to such joint municipal assistance agency after the adoption of a resolution or ordinance by the governing board of the joint agency or municipality setting forth the determination and finding prescribed above for the original members and authorizing said municipality to become a member and appointing ~~a one~~ commissioner, and with the consent of a majority of the board of commissioners of the joint municipal assistance agency. Any joint agency or municipality may withdraw from a joint municipal assistance agency, provided, however, that all obligations incurred by a joint agency or municipality while it was a member shall remain in full force and effect. Notice that a joint agency or municipality has been added to or withdrawn from membership in the joint municipal assistance agency shall be filed with the Secretary of State, and the Secretary of State shall thereupon issue a new or supplemental certificate of incorporation setting forth the names of all members of the joint municipal assistance agency. Additions of new members or withdrawal of members shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(c) The joint municipal assistance agency ~~shall~~ may be governed by a board of commissioners appointed as provided in ~~subsection (a) above by the respective governing boards of the municipalities which are members of the joint municipal assistance agency.~~ subsections (a) and (b) of this section. It shall not be necessary to notify the Secretary of State of the appointment of any commissioners following the notifications referred to in subsections (a) and (b) ~~above.~~ of this section. Each commissioner shall have one vote and 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 joint agency or municipality and spread upon its minutes. The governing board of each of the joint agencies or municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner representing such joint agency or municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, other than such commissioner's position as an officer, director or member of the executive committee. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. All powers, functions, rights and privileges of the joint municipal assistance agency shall be exercised or delegated by the board of commissioners.

(d) The board of commissioners of the joint municipal assistance agency shall annually elect one of the commissioners as president, another as vice president, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary or secretaries and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or any assistant secretary. The board of commissioners may also appoint and prescribe the duties of such additional officers as it deems necessary. The secretary or any assistant secretary of the joint municipal assistance agency shall keep a record of the proceedings of the joint municipal assistance agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint municipal assistance agency, the minute book or journal of the joint municipal assistance agency and its official seal. Either the secretary or any assistant secretary of the joint municipal assistance agency may cause copies to be made of all minutes and other records and documents of the joint municipal assistance agency and may give certificates under the official seal of the joint municipal assistance agency to the effect that such copies are true copies, and all persons dealing with the joint municipal assistance agency may rely upon such certificates.

(e) Fifty-one percent (51%) of the commissioners of a joint municipal assistance agency then in office shall constitute a quorum, and the commissioners may by written consent executed before or after any meeting waive notice and all other formalities incident to the calling or conduct of the same. Meetings of the commissioners may be

held at any place within the State or any state contiguous to the State. A vacancy in the board of commissioners of the joint municipal assistance agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint municipal assistance agency. Any action taken by the joint municipal assistance agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution ~~shall~~may take effect immediately and need not be published or posted. Except as specifically provided by the bylaws, a majority of the votes of the commissioners present shall be necessary and sufficient to take any action or to pass any resolution.

(f) The board of commissioners of the joint municipal assistance agency may, in its bylaws, provide for a board of directors of the joint municipal assistance agency to be selected from the commissioners and alternate commissioners. The board of directors shall have and exercise such of the powers and authority of the board of commissioners during the intervals between the board of commissioners' meetings as shall be prescribed in the bylaws, rules, motions and resolutions of the board of commissioners. The terms of office of the members of the board of directors and the method of filling vacancies therein shall be fixed by the bylaws of the board of commissioners of the joint municipal assistance agency. The bylaws of the joint municipal assistance agency shall provide that the officers of the board of commissioners elected pursuant to subsection (d) of this section must also serve on the board of directors and hold the same offices thereon.

(g) The board of commissioners may also provide, in its bylaws or otherwise, that the board of directors shall create an executive committee of the board of directors composed of the officers of the board of directors, together with such other members of the board of directors as may be prescribed and that such executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between that board's meetings as shall be prescribed in the bylaws of the joint municipal assistance agency or in the rules or resolutions of the board of directors.

(h) The board of commissioners, board of directors and executive committee may provide or adopt methods and procedures consistent with other applicable laws for the calling or conducting of meetings or the taking of any action.

(i) No commissioner or director of a joint municipal assistance agency shall receive any compensation for the performance of his or her duties hereunder, provided, however, that each commissioner and director may be paid his or her necessary expenses incurred while engaged in the performance of such duties."

Sec. 23. Chapter 159B of the General Statutes is amended by adding a new section to read:

"§ 159B-43.1. Alternative to board of commissioners.

(a) In lieu of the provisions of G.S. 159B-43(c) through (i), a joint municipal assistance agency organized by two or more joint agencies, by resolutions adopted by each of those joint agencies, may be governed by an executive committee created pursuant to the provisions of G.S. 159B-10. In that case, the commissioners of the joint municipal assistance agency appointed pursuant to the provisions of G.S. 159B-43(a) and (b) shall adopt a resolution substantially identical to the resolutions adopted by the

joint agencies creating the executive committee. The terms of office, methods of filling vacancies, and such other matters involving the executive committee shall be as set forth in those resolutions.

(b) In connection with a joint municipal assistance agency governed pursuant to the provisions of subsection (a) of this section, member municipalities of that joint municipal assistance agency which are not members of the joint agencies organizing that joint municipal assistance agency and nonmunicipal members, as defined in G.S. 159B-50, may elect members to the executive committee pursuant to those procedures as they agree upon among themselves, but subject to the following: if the number of the member municipalities and nonmunicipal members is seven or less, those municipalities and nonmunicipal members, acting jointly, may appoint one member to the executive committee, and if the number of the member municipalities and nonmunicipal members is more than seven, those member municipalities and nonmunicipal members, acting jointly, may appoint two members to the executive committee.

(c) Members of the executive committee appointed by the member municipalities and nonmunicipal members, and members of any subcommittee created by those member municipalities and nonmunicipal members, may receive compensation, and be paid expenses, for the performance of their duties as determined by the member municipalities and nonmunicipal members appointing those members. However, for any member of an executive committee who is an employee of a member municipality or nonmunicipal member, a payment in lieu of any compensation shall be made to the member municipality or nonmunicipal member for distribution to the executive committee member in the manner and amount, if any, it deems appropriate."

Sec. 24. G.S. 159B-44(8) reads as rewritten:

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

Sec. 25. G.S. 159B-45 reads as rewritten:

"§ 159B-45. Dissolution.

Whenever the governing board of a joint municipal assistance agency and the governing boards of its member joint agencies or municipalities shall by resolution or ordinance determine that the purposes for which the joint municipal assistance agency was formed have been substantially fulfilled and that all obligations incurred by the joint municipal assistance agency have been fully paid or satisfied, ~~such the governing boards may declare board of the~~ joint municipal assistance agency may by resolution declare the joint municipal assistance agency to be dissolved. On the effective date of such resolution ~~or ordinance, declaring the joint agency to be dissolved,~~ the title to all funds and other property owned by the joint municipal assistance agency at the time of such dissolution shall vest in the members of the joint municipal assistance agency as provided in this Chapter and the bylaws of the joint municipal assistance agency. Notice of such dissolution shall be filed with the Secretary of State."

Sec. 26. G.S. 159B-46 reads as rewritten:

"§ 159B-46. Reports, liability, and personnel.

(a) Each joint municipal assistance agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its members. Each such report shall set forth an operating and financial statement covering the operations of the joint municipal assistance agency during such year. The joint municipal assistance agency shall cause an audit of its books of record and accounts to be made at least once in each year by independent certified public accountants.

(b) No commissioner, alternate commissioner or director or officer of any joint municipal assistance ~~agency or officer of any municipality agency, member of an executive committee created pursuant to G.S. 159B-10, officer of any joint agency or municipality,~~ or person or persons acting in their behalf, while acting within the scope of his authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Article.

(c) Each municipality, joint agency and joint municipal assistance agency shall be severally liable for its own acts or omissions and not jointly or severally liable for the acts, omissions, or obligations of others, including other municipalities.

(d) In no event shall any municipality or joint agency be liable or responsible for any acts, omissions or obligations of any joint municipal assistance agency or any of its officers, members of an executive committee, employees or agents; provided, however, that contracts between the joint municipal assistance agency and one or more municipalities or one or more joint agencies may expressly provide for the imputation of or indemnification for any liability of one party thereto by the other, or for the assumption of any obligation of one party thereto by the other.

(e) Personnel employed or appointed by a municipality and performing services for or on behalf of a joint municipal assistance agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

(f) Personnel employed or appointed by a joint municipal assistance agency shall be qualified for participation in the North Carolina Local Government Employees' Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

(g) The offices of commissioner, alternate commissioner, officer, director and member of the executive committee of a joint municipal assistance agency are hereby declared to be offices which may be held by the holder 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. 27. G.S. 159B-47 reads as rewritten:

"§ 159B-47. Defense.

(a) The board of commissioners of a joint municipal assistance agency may provide for the defense of a criminal or civil proceeding brought against any current or

former commissioner, member of an executive committee, director, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee of the joint municipal assistance agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(b) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, directors, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or any act allegedly done or omission allegedly made in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint municipal assistance agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, directors, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, director, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint municipal assistance agency may purchase insurance coverage for payment of claims or judgments pursuant to this section."

Sec. 28. G.S. 159B-48 reads as rewritten:

"§ 159B-48. Nonmunicipal members; constituent institutions of The University of North Carolina.

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, any constituent institution of The University of North Carolina, as defined in Article 1 of Chapter 116 of the General Statutes, that owns a system or facility for the generation, transmission, or distribution of electric power and energy for public and private use, may become a member of a joint municipal assistance agency. The ~~Commissioner~~commissioner and one or more alternate ~~Commissioners~~commissioners designated by any such members shall be appointed by its local governing board. As a member, the constituent institution has all the rights, privileges, immunities, powers, authority, and responsibilities of a municipal member of a joint municipal assistance agency under Article 3 of this Chapter, including, the protection and immunities granted under Article 3 to those employed, appointed or otherwise acting on behalf of the constituent institutions, and the power and authority to enter into contracts and arrangements with a joint municipal assistance agency."

Sec. 29. The Joint Legislative Utility Review Committee shall study the question of whether further changes are needed to Chapter 159B of the General Statutes and shall report its findings and recommendations to the 1996 Regular Session of the General Assembly.

Sec. 30. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives