

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

(a) 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 or 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.

(b) If any municipality which is a member of the joint agency has contracted to buy from the joint agency the capacity and output of one or more specified projects as contemplated by and containing characteristics authorized by subsection (a) of this section, and if the joint agency has acquired one or more projects and financed the acquisition of any project by issuing bonds pursuant to the provisions of this Chapter, and if the joint agency sells or otherwise disposes of any project, and if the proceeds of the sale or other disposition of any project, together with other moneys available to the joint agency for the purpose of paying the bonds, are not sufficient to pay or provide for the payment of the principal of, premium, if any, and interest on all of such bonds issued to finance the acquisition of the existing project or projects, the municipality may enter into a support contract with the joint agency to pay a proportionate share of the principal of, premium, if any, and interest on bonds issued by the joint agency to (i) refinance the bonds issued to finance the acquisition of any existing project being sold or otherwise disposed of that are not defeased from other sources, (ii) finance any collateral posting requirements of replacement power supply arrangements entered into by the joint agency, and (iii) finance any required reserves and other costs associated with the support contracts and the issuance of the bonds authorized by G.S. 159B-14.

As a support contract authorized by this subsection is a replacement for and in lieu of the payment obligations authorized by subsection (a) of this section related to an existing project or projects, any support contract may provide that the contracting municipality is obligated to make the payments required by the support contract unconditionally and without offset, counterclaim, or otherwise, and notwithstanding the performance or nonperformance of the joint agency under the support contract, or of any other municipality entering into a similar support contract with the joint agency, or the delivery of or failure to deliver power or energy or the performance or nonperformance by any party under any related power supply contract. Any support contract entered into between a joint agency and its member municipalities may also provide that if any municipality defaults in the payment of its obligations under the support

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contract, the remaining member municipalities subject to the contract are required to pay a proportionate share of the defaulted payments.

Notwithstanding the provisions of any other law to the contrary, the obligations of the municipality under a support contract may extend for a period of 30 years, except for accrued obligations as of the expiration of the period for which the contract may be continued until the accrued obligations are fully satisfied, and, with respect to administrative costs only, for a reasonable period of time thereafter.

Obligations under a support contract shall not be taken into account in computing any debt or other limitation that may be imposed by law. Being on account of the refinancing of obligations incurred in connection with the acquisition of a project or projects, the obligations of the municipality under any support contract shall constitute an operating expense of its municipal electric system for all purposes of G.S. 159-47 and other purposes, save only as may have been duly contracted with bondholders of the municipality.

(c) 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 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.

(d) 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 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 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 and payments pursuant to support contracts authorized by subsection (b) of this section. The willful or negligent failure by any municipality to comply with the obligations applicable to it shall constitute a failure or refusal to comply with the provisions of this Chapter for purposes of G.S. 159-181(c), and the financial powers of the governing board of the municipality that may be vested in the Local Government Commission pursuant to G.S.

159-181(c) shall include those powers incident to carrying out the requirements and obligations specified in this section.

Payments by any joint municipal assistance agency to any joint agency under any contract or 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, 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 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. (1975, c. 186, s. 1; 1983, c. 574, s. 5; 1991 (Reg. Sess., 1992), c. 888, s. 3; 1995, c. 412, s. 8; 2015-3, s. 4.)