

March 26, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. *TO CREATE THE YADKIN RIVER TRUST IN ORDER TO: (1) DEVELOP THE YADKIN RIVER IN STANLY, DAVIDSON, MONTGOMERY, AND ROWAN COUNTIES AS AN INSTRUMENTALITY OF INTRASTATE, INTERSTATE, AND FOREIGN COMMERCE AND NAVIGATION; (2) ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING HYDROELECTRIC FACILITY, AND TO AUTHORIZE ISSUANCE OF BONDS AND NOTES BY THE TRUST FOR THAT PURPOSE; AND (3) PRODUCE, DISTRIBUTE, AND SELL HYDROELECTRIC POWER FROM EXISTING OR NEW HYDROELECTRIC FACILITIES*

Enacts Article 9, entitled *Yadkin River Trust*, in GS Chapter 77. Establishes the Yadkin River Trust and states its purpose to (1) develop the Yadkin River in certain counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power; (2) to insure equitable distribution of water for public purposes; and (3) to maintain recreational facilities associated with the river. Defines relevant terms. Provides for a Board of Directors. Authorizes the Yadkin River Trust to acquire the Yadkin Project. Specifies the powers and duties of the Trust. Authorizes the Trust to issue bonds and notes and to issue refunding bonds or notes and enacts provisions related to refunding bonds or notes, public hearing requirements, security documents, and remedies. Includes a provision on conflicts of interest by Trust directors, officers, or employees. Requires cooperation by state agencies and officers. Specifies disposition and use of net earnings and contains a provision for depositing and paying Trust funds. Provides for tax exemption. Requires the Trust to submit a budget and report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Subcommittees on Appropriations by July 1 of each year. Specifies information to be included in the report. Effective July 1, 2009.

Intro. by Hartsell.

GS 77

April 15, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Includes in the definition of *costs* financing charges, including estimated interest during the acquisition or construction of a project and for one year thereafter *and any payments related to hedging instruments*. Specifies that references to the project or hydroelectric project refer to the *Yadkin Project* throughout. Clarifies that *security document* means one or more written instruments establishing the rights or responsibilities of the Yadkin River Trust (Trust) and the holders of bonds issued to finance *the acquisition, improvement, or operation of the Yadkin Project and related to facilities and to ensure compliance with the terms of any Yadkin Project license, permits, and contracts, including any license issued by the Federal Energy Regulatory Commission*. Adds a definition for *Yadkin Project License* to mean the license issued by the Federal Energy Regulatory Commission as of May 1, 1958, which expired on April 30, 2008, the year-to-year annual licenses that have been issued since that time, and any future renewal license for Project No. 2197.

Authorizes the Trust to acquire the Yadkin Project License, as well as the Yadkin Project, including all associated facilities and land and water rights. Provides that, if the Trust acquires the Yadkin Project *License*, the Trust may also file an application for a new license. Makes other clarifying and conforming changes regarding this authority.

Specifies that bonds or notes issued under this Article are payable solely from the revenues, income, or assets of the Trust that are pledged for their payment and requires that a statement to that effect be included on the face of each issued note or bond. Adds that the Trust must seek enforcement of environmental laws and contribution to environmental cleanup costs, consistent with its obligations under this act.

Requires that, if the Trust acquires the Yadkin River Project and Yadkin Project License, the Trust must (1) institute operational changes to the Yadkin Project that will retain more water in

Badin, Falls, and Tuckertown lakes, as well as High Rock Lake, and provide a consistent flow of water to downstream users; (2) extend the recreation seasons at Badin, Falls, and Tuckertown lakes, as well as High Rock Lake; and (3) review the proposed Water Infrastructure Mitigation license condition proposed by the City of Salisbury and determine what the Trust can do to assure an adequate, clean future water supply for the region.

Provides that the required annual report to the Joint Legislative Commission on Governmental Operations, the Joint legislative Utility Review Committee, and the House and Senate Committees on Appropriations must also include information on (1) the amount of water distributed to each entity or water user and (2) the status of environmental testing, assessment, and remediation of contamination at the Badin Works and other sites located in Stanly County.

Amends GS 66-58 to exempt the Trust from the prohibition on governmental entities from competing commercially with private enterprise in certain circumstances

Makes various conforming and technical changes, including a technical change to the title.

May 4, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. Senate committee substitute makes the following changes to 2nd edition. To be digested in tomorrow's *Daily Bulletin*.

May 5, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. Senate committee substitute makes the following changes to the 2nd edition. Establishes the Yadkin River Trust (Trust) as a public agency and instrumentality of the state (was, as a body politic and corporate). Makes conforming changes establishing the identity of the Trust as a public agency and instrumentality of the state and deleting references to the Trust as a body politic and corporate. Makes additional organizational changes to proposed GS 77-120.

Amends proposed GS 77-121 to delete nine of the thirteen definitions included in the 2nd edition. Retains definitions for *Board, Trust, Yadkin Project, and Yadkin Project License*.

Amends proposed GS 77-122 to provide that the Board of Directors of the Yadkin River Trust is to consist of seven directors appointed by the Governor upon the advice of the Speaker of the House of Representatives and the President Pro Tempore of the Senate (was, upon the advice of the House Public Utilities Committee and the Senate Commerce Committee) and subject to confirmation by the General Assembly by joint resolution. Clarifies that if a vacancy occurs in the office of director when the General Assembly is not in session, and the Governor deems making an appointment to fill the vacancy as urgent, then the Governor may appoint an interim director to serve pending confirmation by the General Assembly. Makes additional organizational and technical changes to proposed GS 77-122.

Deletes proposed subsections to GS 77-122 concerning the selection of the Trust's treasurer, appointment of an executive director, and establishment of an office for the transaction of the Trust's business. Instead rewrites proposed GS 77-124 to provide for the "Operation of the Trust" (was, powers and duties). Directs the Board to appoint an executive director (ED) and set the salary for the ED. Provides that the ED serves at the Board's pleasure. Authorizes the ED to appoint, employ, dismiss, and within the limits of available funding, fix the compensation of other employees as necessary. Requires the Board to determine the policies of the Trust by majority vote of the Board members present and voting, a quorum (a majority of Board members) having been established. Provides that employees of the Trust are exempt from the State Personnel Act except as to the provisions of Articles 6 and 7 of GS Chapter 126. Makes a conforming change to GS 126-5(c1). Provides additional guidelines regarding the management of the Trust and Trust employees. Authorizes the Board to employ consultants as needed.

Deletes proposed provisions regarding the issuance of bonds and notes by the Trust and instead provides that the Trust is a municipality under GS Chapter 159, Article 5, the State and Local Revenue Bond Act, and that the provisions of GS Chapter 159, the Local Government Finance Act, apply to revenue bonds that are issued by the Trust. Provides that the Trust may issue revenue bonds pursuant to GS Chapter 159 to pay all or a portion of the cost of the Yadkin Project.

Rewrites proposed GS 77-125 as Powers of the trust, (was, Bonds and notes). Provides that the Trust has all of the powers necessary to execute the provisions of new Article 9 of GS Chapter 77. Provides a list of powers that are included in the Trust's authority.

Deletes the provisions of proposed GS 77-126 regarding "refunding bonds or notes." Reorganizes provisions of GS 77-124 regarding the responsibilities of the Trust to local governments as GS 77-126 with the catchline Responsibilities to local governments.

Specifies that the revenues from the Yadkin River Project must be used to pay the following obligations: (1) to operate the Yadkin Project; (2) to pay the debt service on any revenue bonds, notes, or other evidences of indebtedness or obligation; (3) to fulfill the responsibilities to local government under new GS 77-126; and (4) to make payments to taxing units under new GS 77-129 (exemption from taxation, payments in lieu of taxes). Provides that any revenues remaining after the listed obligations have been met are to be remitted to the State Treasurer and credited to the General Fund. Provides that the state may use all or a portion of the revenue remitted to provide funds for the replacement of the Yadkin River Bridge on Interstate 85.

Requires the Trust to submit an annual report regarding its operations and transactions (was, an annual budget and a report) for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committee on Appropriations on or before July 1 of each year. Specifies the required content of the report. Provides that the operations of the Trust are subject to the oversight of the State Auditor.

Provides that a director, officer, or employee of the Trust who has a conflict of interest may not participate on the behalf of the Trust in the authorization of the contract with which the conflict of interest exists (was, could not participate in the authorization of any contract). Provides criteria for determining if there is a conflict of interest.

Deletes proposed provisions regarding the refunding of bonds or notes, public hearing requirements, security documents, status of bonds and notes under the UCC, liability of officers or directors, remedies, cooperation by other state agencies, and the funds of the Trust. Makes additional organizational changes.

Amends GS 126-5(c1) to add employees of the Yadkin River Trust to those that are exempted from GS Chapter 126 (State Personnel System), except for Article 6 (Equal Employment) and Article 7 (Privacy of Personnel Records). Amends GS 150B-1(c) to add the Yadkin River Trust as established in proposed GS 77-120 to the list of agencies exempt from the provisions of GS Chapter 150B (Administrative Procedure Act). Amends GS 159-81 to define the Yadkin River Trust as a municipality. Makes additional technical changes.

Changes the effective date to when the act becomes law (was, July 1, 2009).

August 5, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. House committee substitute makes the following changes to 3rd edition. Amends proposed Article 9 of GS Chapter 77 by renumbering the statutes as GS 77-150 through GS 77-161 (was, GS 77-120 through GS 77-131). Provides in proposed GS 77-153 that the Yadkin River Trust (Trust) may acquire the Yadkin Project License (was, and the Yadkin Project, including all associated facilities and land and water rights) and may pursue transfer of the license (was, shall pursue a transfer if the Trust acquires the license), in addition to performing other related activities. Requires the Trust to promptly request permission from the General Assembly to issue revenue bonds or other financing authority to enable acquisition and operation of the Yadkin Project if the Trust acquires the license [was, any terms of acquisition must be pre-approved by the Directors of the Yadkin River Trust (Board)]. Allows the State to negotiate, pursue transfer of title for property and permits, and execute agreements as necessary to acquire the Yadkin Project. Provides in proposed GS 77-154 that the Board may enter into a contract with an investor-owned utility, electric membership corporation, or other qualified third party with experience in the operation of electric generating facilities to operate the Yadkin Project on behalf of the Trust, provided that such contract does not abrogate the duties of the Trust and is otherwise consistent with the Article. Modifies the powers of the Trust in proposed GS 77-125 by removing several of the listed financial activities. Amends proposed GS 77-156 to modify existing duties of the Trust and

establish priorities for allocating funds for grants and projects (was, a list of services that the Trust was required to provide to local governments). Deletes statutes providing for revenue bonds and the exemption from tax for property owned by the Trust and, instead, reserves those statutes for future codification purposes. Amends proposed GS 77-158 to delete that revenues from the Yadkin River Project must be used to (1) pay the debt service on any revenue bonds, notes, or other evidences of indebtedness or obligation or (2) make payments to taxing units. Also deletes that remaining revenues are to be remitted to the General Fund and that the state may use those funds to replace the Yadkin River Bridge.

States that the General Assembly encourages the continuation of discussions between the state, Alcoa Power Generating, Inc., and other interested parties to explore potential settlement of the dispute over the license for and operation of the Yadkin Project. Requires the Department of Justice to report to the Joint Legislative Commission on Governmental Operations (JLCGO) and the Joint Legislative Utility Review Committee (JLURC) by July 1, 2010, on the status of the matter.

Requires the Secretary of Commerce to present a detailed business plan for operation of the Trust to the JLCGO and the JLURC by March 1, 2010.

Provides that (1) the provisions of this act do not apply to any investor-owned utilities regulated by the Utilities Commission, with the exception of GS 77-154(d), as enacted by Section 1 of the act; and (2) that if the Federal Energy Regulatory Commission issues a new multiyear license to Alcoa Power Generating, Inc., for the Yadkin Project, the provisions of this act expire upon issuance of that license.

Deletes amendments to GS 159-81.

Makes a conforming change to the title.

August 6, 2009

S 967. CREATION OF YADKIN RIVER TRUST. Filed 3/25/09. House committee substitute makes the following changes to 4th edition. Enacts new Article 11 (was, Article 9 in the previous edition) in GS Chapter 77. Amends proposed GS 77-153 to clarify that, if the Yadkin Project License and the Yadkin Project are acquired, the Yadkin River Trust is prohibited from agreeing to voluntarily surrender, terminate, transfer, lease, or sell any property that is part of the Yadkin Project, unless an act of the General Assembly approves the action. Deletes proposed provisions in GS 77-154 (Operation of the Trust), GS 77-155 (Powers of the Trust), GS 77-158 (Use of revenues), and GS 77-160 (Report; audit) and, instead, reserves those statutes for future codification purposes. Also deletes (1) proposed GS 77-161 (Conflicts of interest), (2) amendments to GS 66-58(b), (3) amendments to GS 126-5(c1), (4) amendments to GS 150B-1(c), and (5) language providing that the act does not apply to any investor-owned utilities regulated by the Utilities Commission.