

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 967

Short Title: Creation of Yadkin River Trust. (Public)

Sponsors: Senators Hartsell; Berger of Rockingham, Bingham, Clodfelter, Purcell, Rand,
and Tillman.

Referred to: Judiciary II.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT 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.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9.

"Yadkin River Trust.

"§ 77-120. Trust established; purposes.

There is established the Yadkin River Trust as a body politic and corporate. The purpose of the Trust is: (i) to develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power; (ii) to ensure the equitable distribution of water for public purposes; and (iii) to maintain recreational facilities associated with the Yadkin River. These purposes are declared to be in all respects for the benefit of the people of the State.

"§ 77-121. Definitions.

The following definitions apply in this Article:

- (1) Board. – The Board of Directors of the Yadkin River Trust.
- (2) Bonds. – The revenue bonds or other interest bearing obligations authorized to be issued by the Board under this Article.
- (3) Costs. – The capital cost of a project, including:
 - a. The costs of doing any or all of the following:
 1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.
 2. Reconstructing, remodeling, altering, renovating, replacing, refurbishing, and reequipping.
 3. Enlarging, expanding, and extending.
 4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.



- 1 b. The costs of all property, both real and personal and both improved
2 and unimproved, and of plants, works, appurtenances, structures,
3 facilities, furnishings, machinery, equipment, vehicles, easements,
4 water rights, air rights, franchises, and licenses used or useful in
5 connection with the project.
- 6 c. The costs of demolishing or moving structures from land acquired
7 and acquiring land to which the structures are to be moved.
- 8 d. Financing charges, including estimated interest during the acquisition
9 or construction of a project and for one year thereafter.
- 10 e. The costs of services to provide plans, specifications, studies, reports,
11 surveys, and estimates of costs and revenues.
- 12 f. The costs of paying any interim financing, including principal,
13 interest, and premium, related to the acquisition or construction of
14 the project.
- 15 g. Administrative and legal expenses and administrative charges.
- 16 h. The costs of obtaining bond and reserve fund insurance and
17 investment contracts, of credit-enhancement facilities, liquidity
18 facilities, and interest-rate agreements, and of establishing and
19 maintaining debt service and other reserves.
- 20 i. Any other services, costs, and expenses necessary or incidental to the
21 project.
- 22 (4) Credit facility. – An agreement with a banking institution, an insurance
23 institution, an investment institution, or other financial institution located
24 inside or outside the United States of America that provides for prompt
25 payment, whether at maturity, presentment, or tender for purchase,
26 redemption, or acceleration, of part or all of the principal or purchase price,
27 redemption premium, if any, and interest on a bond or note issued by the
28 Trust and for repayment of the institution.
- 29 (5) Local Government Commission. – The Local Government Commission of
30 the Department of State Treasurer, established by Article 2 of Chapter 159
31 of the General Statutes.
- 32 (6) Notes. – Revenue notes or revenue bond anticipation notes issued by the
33 Trust under this Article.
- 34 (7) Par formula. – A provision or formula to make periodic adjustments in the
35 interest rate of a bond or note, including:
- 36 a. A provision for an adjustment to keep the purchase price of the bond
37 or note in the open market as close to par as possible.
- 38 b. A provision for an adjustment based on one or more percentages of a
39 prime rate or base rate that may vary or apply for specified periods of
40 time.
- 41 c. Any other provision that does not materially and adversely affect the
42 financial position of the Trust and the marketing of the bonds or
43 notes at a reasonable interest cost to the Trust.
- 44 (8) Person. – Any person, corporation, partnership, association, trust, or other
45 legal entity.
- 46 (9) Revenues. – Rents, fees, charges, payments, proceeds, or other income or
47 profit derived from the hydroelectric project or from any pledge of nontax
48 revenues, appropriation, or payment made by the State or a county in which
49 the hydroelectric project is located.
- 50 (10) Security document. – One or more written instruments establishing the rights
51 and responsibilities of the Trust and the holders of bonds issued to finance

1 the hydroelectric project. A security document may provide for, or be in the
2 form of an agreement with, a trustee for the benefit of the bondholders. A
3 security document may contain an assignment, pledge, mortgage, or other
4 encumbrance of part or all of the Trust's interest in, or right to receive
5 revenues from, the hydroelectric project.

6 (11) Trust. – The Yadkin River Trust as established by this Article.

7 (12) Yadkin Project. – Project No. 2197 as described in a license issued by the
8 Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter
9 subject to the regulation of the Federal Regulatory Commission.

10 **"§ 77-122. Board of Directors.**

11 (a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of
12 seven directors who shall be appointed by the Governor upon the advice of the House Public
13 Utilities Committee and Senate Commerce Committee and subject to confirmation by the
14 General Assembly by joint resolution. Two of the directors shall have substantial work
15 experience within the operations of electric cooperatives or investor-owned utilities or
16 substantial experience on an electric cooperative board or investor-owned utility board but must
17 not serve as an employee or board member of an electric cooperative or investor-owned utility
18 during their term as a director of the Yadkin River Trust. The names of directors to be
19 appointed by the Governor shall be submitted by the Governor to the General Assembly for
20 confirmation by the General Assembly on or before June 1 of the year in which the terms for
21 which the appointments are to be made are to expire. Upon failure of the Governor to submit
22 names as herein provided, the President Pro Tempore of the Senate and Speaker of the House
23 of Representatives jointly shall submit the names of a like number of directors to the General
24 Assembly on or before June 15 of the same year for confirmation by the General Assembly.
25 Regardless of the way in which the names of directors are submitted, confirmation of directors
26 must be accomplished prior to adjournment of the then current session of the General
27 Assembly.

28 (b) Terms. – The term of office of directors of the Board is four years. A director may
29 be reappointed to any number of successive four-year terms. A director in office shall continue
30 to serve until the director's successor is duly confirmed and qualified, but the holdover shall not
31 affect the expiration date of the succeeding term.

32 (c) Chairman; Vice-Chair. – Upon confirmation of the directors by the General
33 Assembly as provided in subsection (a) of this section, the Governor shall designate one of the
34 directors to serve as chairman of the Board for the succeeding four years and until the director's
35 successor is duly confirmed and qualifies. Upon death or resignation of the director appointed
36 as chairman, the Governor shall designate the chairman from the remaining directors and
37 appoint a successor as hereinafter provided to fill the vacancy on the Board. The Governor shall
38 convene the first meeting of the Board, at which time the members of the Board shall elect
39 from their membership a vice-chair of the Board.

40 (d) Removal. – The Governor may remove any director of the Board for misfeasance,
41 malfeasance, or nonfeasance as provided in G.S. 143B-13.

42 (e) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other
43 reason in the office of any director prior to the expiration of the director's term of office, the
44 name of the director's successor shall be submitted by the Governor within four weeks after the
45 vacancy arises to the General Assembly for confirmation by the General Assembly. Upon
46 failure of the Governor to submit the name of the successor, the President Pro Tempore of the
47 Senate and the Speaker of the House of Representatives jointly shall submit the name of a
48 successor to the General Assembly within six weeks after the vacancy arises. Regardless of the
49 way in which the names of directors are submitted, confirmation of directors must be
50 accomplished prior to the adjournment of the then current session of the General Assembly. If a
51 vacancy arises in the office of director when the General Assembly is not in session, and the

1 appointment is deemed urgent by the Governor, the director may be appointed and serve on an
2 interim basis pending confirmation by the General Assembly.

3 (f) Organization of the Board. – The Board shall adopt bylaws with respect to the
4 calling of meetings, quorums, voting procedures, the keeping of records, and other
5 organizational and administrative matters as the Board may determine. A quorum shall consist
6 of a majority of the members of the Board. No vacancy in the membership of the Board shall
7 impair the right of a quorum to exercise all rights and to perform all the duties of the Board and
8 the Trust.

9 (g) Compensation of the Board. – No part of the revenues or assets of the Trust shall
10 inure to the benefit of or be distributable to the members of the Board or officers or other
11 private persons. The members of the Board shall receive no salary for their services but shall be
12 entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

13 (h) Treasurer. – The Board shall select the Trust's treasurer. The Board shall require a
14 surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid
15 by the Trust as a necessary expense of the Trust.

16 (i) Executive Director and Other Employees. – The Board shall appoint an executive
17 director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive
18 director or a person designated by the executive director shall appoint, employ, dismiss, and,
19 within the limits of available funding, fix the compensation of other employees as considered
20 necessary.

21 (j) Office. – The Board shall establish an office for the transaction of the Trust's
22 business at the place the Board finds advisable or necessary to implement the provisions of this
23 Article.

24 **"§ 77-123. Authority to acquire Yadkin Project.**

25 The Yadkin River Trust may acquire the Yadkin Project. If the Trust acquires the Yadkin
26 Project, it shall pursue transfer of the license from the Federal Energy Regulatory Commission
27 and other transfer of title and may enter into negotiations, execute agreements, amend the
28 license, and take any other actions necessary to become licensee for the Yadkin Project on
29 behalf of the State. Any terms of acquisition shall be approved by the Board of Directors for the
30 Trust prior to completion of the acquisition. If acquired, the Trust shall not surrender,
31 terminate, transfer, or sell the license or the Yadkin Project without the consent of the General
32 Assembly.

33 **"§ 77-124. Powers and duties.**

34 (a) The Trust has the power to: (i) develop the Yadkin River in Stanly, Davidson,
35 Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign
36 commerce and navigation; (ii) acquire existing hydroelectric facilities; and (iii) produce,
37 distribute, and sell hydroelectric power from existing or new hydroelectric facilities. The Trust
38 has all powers that may be necessary or convenient for the exercise of these powers including,
39 without limiting the generality of the foregoing, the following:

40 (1) The powers of a corporate body, including the power to sue and be sued, to
41 make contracts, to adopt and use a common seal, and to alter the adopted
42 seal as needed.

43 (2) To have perpetual succession as a corporation.

44 (3) To adopt, alter, or repeal its own bylaws and adopt, promulgate, and amend
45 rules to implement the provisions of this Article. The Trust and its activities
46 shall not be governed by the North Carolina Utilities Commission but shall
47 be governed by the provisions of this Article and the rules adopted
48 thereunder.

49 (4) To establish, finance, purchase, construct, operate, and regulate
50 hydroelectric facilities to implement the provisions of this Article.

- 1 (5) To manufacture, produce, and generate hydroelectric power using the waters
2 of the Yadkin River, and to sell the hydroelectric power to utilities within
3 and without the State of North Carolina.
- 4 (6) To set rates, services, and practices, or participate in any organized power
5 sales market with one or more entities for the sale, transmission, or
6 distribution of the power generated by the hydroelectric facility, and to
7 charge and collect fees for the use of power generated.
- 8 (7) To contract and enter into agreements with the State, local governments,
9 other authorities of North Carolina, and other states for the interchange of
10 business and to facilitate the business of the Trust.
- 11 (8) To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or
12 dispose of any property, real, personal, or mixed, or any interest therein.
- 13 (9) To acquire, purchase, establish, build, construct, maintain, equip, and
14 operate any structure or facilities necessary, useful, or customarily used and
15 employed in generation of hydroelectric power.
- 16 (10) To appoint officers, agents, employees, to prescribe their duties, and to fix
17 their compensation.
- 18 (11) To create and operate agencies and departments needed to implement this
19 Article.
- 20 (12) To pay all necessary costs and expenses in the formation, organization,
21 administration, and operation of the Trust.
- 22 (13) To apply for, accept, and administer loans and grants of money from any
23 federal agency, from the State or its political subdivisions, or from any other
24 public or private sources available, to expend the money in accordance with
25 the requirements imposed by the lender or donor, and to give any evidences
26 of indebtedness that are required. No indebtedness of any kind incurred or
27 created by the Trust shall constitute an indebtedness of the State or its
28 political subdivisions, and no indebtedness of the Trust shall involve or be
29 secured by the faith, credit, or taxing power of the State or its political
30 subdivisions.
- 31 (14) To execute security documents and other instruments necessary in exercising
32 its power under this Article.
- 33 (15) To fix, charge, collect, pledge, or assign revenues of the Trust.
- 34 (16) To employ consulting engineers, architects, attorneys, real estate counselors,
35 appraisers, and other consultants and employees as may be required in the
36 judgment of the Board and to fix and pay their compensation from funds
37 available to the Trust, and, when approved by the Local Government
38 Commission under G.S. 159-123(e) and (f) as if the Trust were an issuing
39 unit, to select and retain financial consultants, underwriters, and bond
40 attorneys in connection with the issuance of any bonds and to pay for their
41 services out of the proceeds of any bond issue for which their services were
42 performed.
- 43 (17) To issue bonds or notes of the Trust as provided under this Article to pay the
44 costs associated with the business of the Trust.
- 45 (18) To issue revenue refunding bonds of the Trust as provided under this Article.
- 46 (19) To procure and maintain adequate insurance or otherwise provide for
47 adequate protection to indemnify the Trust and its officers, directors, agents,
48 employees, adjoining property owners, or the general public against loss or
49 liability resulting from any act or omission by or on behalf of the Trust.
- 50 (20) To purchase or finance real or personal property in the manner provided for
51 cities and counties under G.S. 160A-20.

1 (21) With the approval of any unit of local government, to use officers,
2 employees, agents, and facilities of the unit of local government for the
3 purposes and upon the terms as may be mutually agreeable.

4 (22) To issue obligations, without Local Government Commission approval, to
5 finance the purchase or acquisition of land or options on land, or the
6 construction of buildings or facilities. An obligation may be secured by the
7 land purchased or acquired, or by the buildings or facilities constructed, may
8 be unsecured, or may be made payable from revenues, the proceeds of notes,
9 bonds, or the sale of any lands, the proceeds of any bonds of the State or
10 moneys appropriated by the State, or any other available moneys of the
11 Trust. An obligation to finance the purchase or acquisition of land or options
12 on land, or the construction of buildings or facilities, may be sold only to the
13 Escheat Fund as an investment of the Fund pursuant to G.S. 147-69.2(b)(11).

14 (23) To receive and use appropriations from the State, including an appropriation
15 from the proceeds of State general obligation bonds or notes.

16 (b) To execute the powers provided in subsection (a) of this section, the Board shall
17 determine the policies of the Trust by majority vote of the members of the Board present and
18 voting, a quorum having been established. Once a policy is determined, the Board shall
19 communicate it to the executive director who shall have the sole and exclusive authority to
20 execute the policy of the Trust. No member of the Board shall have the responsibility or
21 authority to give operational directives to any employee of the Trust other than the executive
22 director.

23 (c) If the Yadkin River Trust acquires the Yadkin Project as provided in this Article, in
24 addition to other powers and duties, the Trust shall:

25 (1) Conduct environmental testing and assessment of all properties located in
26 Stanly County currently or formerly owned and operated by Alcoa Power
27 Generating, Inc., or Alcoa, Inc., and its subsidiaries, in order to evaluate
28 danger to public health or the environment.

29 (2) Require remediation of contamination at the Badin Works site located in
30 Stanly County to levels over and above the minimum levels that Alcoa or its
31 subsidiaries would be required to perform under current law in order to
32 restore the contaminated land and water to multiple use purposes.

33 (3) Establish a remediation fund to perform necessary environmental testing and
34 remediation of hazardous waste sites in the Yadkin River Basin, excluding
35 properties owned or under the control of Alcoa Power Generating, Inc., or
36 Alcoa, Inc., and its subsidiaries.

37 (4) Install aeration technology in association with the Yadkin Project to increase
38 dissolved oxygen levels and improve water quality in the Yadkin River.

39 (5) Institute operational changes to the Yadkin Project that will retain more
40 water in High Rock Lake and provide a consistent flow of water to
41 downstream water users.

42 (6) Extend the recreation season at High Rock Lake by three months from April
43 1 to October 31.

44 (7) Implement a comprehensive drought management plan, or "Low Inflow
45 Protocol," that requires the Trust to reduce power generation and send less
46 water downstream when certain drought-related triggers are reached.

47 (8) Develop and maintain new or expanded public recreation facilities across the
48 Yadkin River, including a new public swim area in Rowan County, new
49 tailwater fishing access areas, two new reservoir fishing piers, and 10 new
50 campsites.

- 1 (9) Allow the City of Albemarle to increase water withdrawals from the Yadkin
2 River up to 30 million gallons per day.
- 3 (10) Utilize a portion of the proceeds from power generation to fund a Yadkin
4 River Basin Clean Water Trust Fund to be created in order to acquire land
5 for water quality improvements, implement innovative storm water
6 strategies, state-of-the art waste water improvements, and aquatic habitat
7 improvements, and to provide funding mechanisms to assist local
8 governments to make water quality improvements throughout the Yadkin
9 River Basin.
- 10 (11) Apportion a percentage of electricity from the Yadkin Project output for use
11 by a regional economic development entity to be designated by the
12 Department of Commerce. To the extent that there are renewable energy
13 credits attributable to the output, the credits shall belong to the designated
14 entity.
- 15 (12) Use proceeds from power generation to: (i) acquire and donate land to the
16 Town of Badin for a new public park; (ii) acquire and donate land to Rowan
17 County for the continued protection and public access to the Eagle Point
18 Nature Preserve; (iii) acquire other land for conservation purposes; and (iv)
19 make a forty thousand dollars (\$40,000) donation to the Yadkin-Pee Dee
20 River Trail Fund.

21 **"§ 77-125. Bonds and notes.**

22 (a) The Trust may provide for the issuance, at one time or from time to time, of bonds
23 and notes, including bond anticipation notes and renewal notes, of the Trust to carry out its
24 corporate purposes including financing the costs of projects. The principal of and interest on
25 the bonds or notes shall be payable from funds provided under this Article for their payment. A
26 bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in
27 the event bond or renewal note proceeds are not available, from any available Trust revenues or
28 other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of
29 any credit facility.

30 All bonds, notes, or refunding bonds or notes of the Trust are subject to this section and
31 G.S. 77-126.

32 The bonds and notes of each issue shall be dated and may be made redeemable prior to
33 maturity at the option of the Trust or otherwise, at one or more prices, on one or more dates,
34 and upon the terms and conditions set by the Trust. The bonds or notes may also be made
35 payable from time to time on demand or tender for purchase by the owner upon terms and
36 conditions set by the Trust.

37 A bond or note shall bear interest at a rate or rates, including variable rates, as determined
38 by the Local Government Commission with the approval of the Trust. A bond or note may be
39 secured by a reserve fund created for that purpose and funded from proceeds of the bond or
40 note, revenues, or any other source of funds available to the Trust.

41 (b) In fixing the details of bonds or notes, the Trust may provide that the bonds or notes
42 may:

- 43 (1) Be payable from time to time on demand or tender for purchase by the
44 owner of the bond or note if a credit facility supports the bond or note,
45 unless the Local Government Commission specifically determines that a
46 credit facility is not required because the absence of a credit facility will not
47 materially and adversely affect the financial position of the Trust and the
48 marketing of the bonds or notes at a reasonable interest cost to the Trust.
- 49 (2) Be additionally supported by a credit facility.
- 50 (3) Be made subject to redemption or a mandatory tender for purchase prior to
51 maturity.

1 (4) Be capital appreciation bonds.
2 (5) Bear interest at a rate or rates that may vary, including variations permitted
3 pursuant to a par formula.

4 (6) Be made the subject of a remarketing agreement whereby an attempt is made
5 to remarket the bonds or notes to new purchasers prior to their presentment
6 for payment to the provider of the credit facility or to the Trust.

7 (c) Notes and bonds shall mature at the times determined by the Trust, not to exceed 40
8 years from the date of issue. The Trust shall determine the form and manner of execution of a
9 bond or note, including any interest coupons to be attached to the bond or note. The Trust shall
10 fix the denominations and places of payment of principal and interest of the bond or note. The
11 principal of and interest on a bond or note may be paid at any bank or trust company, whether
12 located inside or outside the United States of America.

13 (d) The validity of a bond, note, or coupon that has the signature or facsimile signature
14 of a person who was an officer when the bond, note, or coupon was signed or the facsimile
15 signature attached but who is not that officer when the bond, note, or coupon is delivered is not
16 affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile
17 signature of a person who will be the proper officer to sign the bond, note, or coupon when it is
18 executed but who is not the officer on the date of the bond, note, or coupon.

19 (e) The Trust may provide for any of the following:

20 (1) Authentication of a bond or note by a trustee or other authenticating agent.

21 (2) Issuance of a bond or note as a certificated obligation, an uncertificated
22 obligation, or both.

23 (3) Issuance of a bond or note in coupon form, in registered form, or both.

24 (4) Registration of a coupon bond or note as to principal alone or as to both
25 principal and interest.

26 (5) The reconversion of a bond or note registered as to both principal and
27 interest into a coupon bond or note.

28 (6) The interchange of registered and coupon bonds or notes.

29 (7) A system for registration in accordance with Chapter 159E of the General
30 Statutes.

31 (8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

32 (f) The Trust may not issue a bond or note under this Article, other than an obligation
33 permitted under G.S. 77-123(a)(22), unless its issuance is approved by the Local Government
34 Commission, and it is sold by the Local Government Commission. To obtain approval of a
35 bond or note, the Trust shall file an application for approval with the Local Government
36 Commission. The application shall contain the information required by the Local Government
37 Commission.

38 In determining whether to approve a proposed bond or note issue of the Trust, the Local
39 Government Commission shall consider the following:

40 (1) For bonds or notes to finance activities of the Trust, the criteria for its
41 approval of revenue bonds under G.S. 159-86.

42 (2) The effect of the proposed financing upon any proposed or scheduled sale of
43 obligations by the State, another State agency, or a unit of local government.

44 The Local Government Commission shall approve the proposed bond or note issue if it
45 determines that the proposed financing for the issue meets the criteria and will effect the
46 purposes of this Article.

47 When the Local Government Commission approves a bond or note issue of the Trust, the
48 Trust may submit a written request to the Local Government Commission to sell the approved
49 bonds or notes. Upon receiving a written request, the Local Government Commission shall
50 consult with the Trust on the manner in which the bonds or notes will be sold and the price or
51 prices at which the bonds or notes will be sold. With the approval of the Trust, the Local

1 Government Commission shall sell the bonds or notes either at public or private sale in the
2 manner and at the prices determined to be in the best interest of the Trust and to effect the
3 purposes of this Article.

4 Bonds or notes may be issued under this Article without obtaining, except as otherwise
5 expressly provided in this Article, the consent of any department, division, commission, board,
6 body, bureau, or other agency of the State or without any other proceedings or conditions
7 except as specifically authorized by this Article or by the provisions of the resolution
8 authorizing the issuance of, or any trust agreement securing, the bonds or notes.

9 (g) Each bond or note that is represented by an instrument shall contain a statement
10 signed by the Secretary of the Local Government Commission, or an assistant designated by
11 the Secretary, certifying that the issuance of the bond or note has been approved under this
12 Article. The signature may be a manual signature or a facsimile signature, as determined by the
13 Local Government Commission. Each bond or note that is not represented by an instrument
14 shall be evidenced by a writing relating to the obligation that identifies the obligation or the
15 issue of which it is a part, contains the signed statement certifying approval of the Local
16 Government Commission that is required on an instrument, and is filed with the Local
17 Government Commission. A certification of approval by the Local Government Commission is
18 conclusive evidence that a bond or note complies with this Article.

19 (h) The proceeds of a bond or note shall be used solely for the purposes for which the
20 bond or note was issued and shall be disbursed in accordance with the resolution authorizing
21 the issuance of the bond or note and with any trust agreement securing the bond or note.

22 (i) Prior to the preparation of definitive bonds, the Trust may issue interim receipts or
23 temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds
24 have been executed and are available for delivery.

25 (j) The Trust may secure a bond or note issued under this Article by a trust agreement
26 between the Trust and a corporate trustee. The corporate trustee may be any trust company or
27 bank having the powers of a trust company inside or outside the State. The Trust may secure a
28 bond or note issued under this Article by a deed of trust. The trustee of the deed of trust may be
29 an individual who is a resident of the State. A bank or trust company that is incorporated in this
30 State and is a depository of the proceeds of obligations, revenues, or other money of the Trust
31 may furnish indemnifying bonds or pledge securities required by the Trust.

32 The pledge of any assets, income, or revenues of the Trust to the payment of the principal
33 of or the interest on any obligations of the Trust is binding from the time the pledge is made,
34 and any assets, income, or revenues of the Trust are immediately subject to the lien of the
35 pledge without any physical delivery or other act. The lien created by a pledge is binding
36 against all persons who have claims of any kind against the Trust, regardless of whether they
37 have notice of the lien.

38 (k) A resolution authorizing the issuance of a bond or note and a trust agreement
39 securing a bond or note may provide that any moneys held under the resolution or trust
40 agreement may be temporarily invested pending disbursement. Any officer with whom, or any
41 bank or trust company with which, the moneys are deposited is considered a trustee of the
42 moneys and must hold and apply the moneys for their stated purpose in accordance with this
43 Article and the resolution or trust agreement. The Trust may invest any moneys as allowed in
44 G.S. 147-69.1 for investments of the State Treasurer or in this subsection.

45 In connection with or incidental to the acquisition or carrying of any investment relating to
46 bonds, program of investment relating to bonds, or carrying of bonds, the Trust may, with the
47 approval of the Local Government Commission, enter into a contract to place the investment or
48 obligation of the Trust, as represented by the bonds, investment, or program of investment and
49 the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other
50 basis, including the following:

- 1 (1) Interest rate swap agreements, currency swap agreements, insurance
2 agreements, forward payment conversion agreements, and futures.
- 3 (2) Contracts providing for payments based on levels of, or changes in, interest
4 rates, currency exchange rates, or stock or other indices.
- 5 (3) Contracts to exchange cash flows or a series of payments.
- 6 (4) Contracts to hedge payment, currency, rate, spread, or similar exposure,
7 including interest rate floors or caps, options, puts, and calls.

8 The Trust may enter a contract of this type in connection with, or incidental to, entering into
9 or maintaining any agreement that secures bonds. A contract shall contain the payment,
10 security, term, default, remedy, and other terms and conditions the Board considers appropriate.
11 The Trust may enter a contract of this type with any person after giving due consideration,
12 where applicable, of the person's creditworthiness as determined by a rating by a nationally
13 recognized rating agency or any other criteria the Board considers appropriate. In connection
14 with, or incidental to, the issuance or carrying of bonds, or the entering of any contract
15 described in this subsection, the Trust may enter into credit enhancement or liquidity
16 agreements, with payment, interest rate, termination date, currency, security, default, remedy,
17 and other terms and conditions as the Trust determines. Proceeds of bonds and any moneys set
18 aside and pledged to secure payment of bonds or any of the contracts entered into under this
19 subsection may be pledged to and used to service any of the contracts entered into under this
20 section.

21 (1) Bonds and notes are exempt from all State, county, and municipal taxation or
22 assessment, direct or indirect, general or special, whether imposed for the purpose of general
23 revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the
24 transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject
25 to taxation as income.

26 (m) Bonds or notes issued under this Article shall not constitute a debt secured by a
27 pledge of the faith and credit of the State or a political subdivision of the State and shall be
28 payable solely from the revenues, income, or assets of the Trust that are pledged for their
29 payment. The face of each bond or note issued shall contain a statement that the Trust is
30 obligated to pay the bond or note or the interest on the bond or note only from the revenues,
31 income, or assets pledged in payment of the bond or note and that neither the faith and credit
32 nor the taxing power of the State or any political subdivision of the State is pledged in payment
33 of the principal of or the interest on the bond or note.

34 (n) The State pledges to the holder of a bond or note issued under this Article that, as
35 long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the
36 Trust had when the bond or note was issued in a way that impairs the ability of the Trust to
37 produce revenues sufficient with other available funds to do all of the following:

- 38 (1) Maintain and operate the project for which the bond or note was issued.
- 39 (2) Pay the principal of, interest on, and redemption premium, if any, of the
40 bond or note.
- 41 (3) Fulfill the terms of an agreement with the holder.

42 The State further pledges to the holder of a bond or note issued under this Article that the
43 State will not impair the rights and remedies of the holder concerning the bond or note.

44 (o) Obligations issued under this Article are made securities in which all public officers
45 and public bodies of the State and its political subdivisions, and all insurance companies, trust
46 companies, banking associations, investment companies, executors, administrators, trustees,
47 and other fiduciaries may properly and legally invest funds, including capital in their control or
48 belonging to them. The obligations are made securities that may properly and legally be
49 deposited with and received by any State or municipal officer or any agency or political
50 subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of
51 the State is now or may be authorized by law.

1 "§ 77-126. Refunding bonds or notes.

2 (a) The Trust may issue refunding bonds or notes for the purpose of refunding any
3 outstanding bonds or notes issued under this Article, including any redemption premium on the
4 bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding
5 bonds or notes shall be issued in accordance with the same procedures and requirements as
6 bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and
7 notes issued under this Article.

8 Refunding bonds or notes may have different interest rates and maturities than the bonds or
9 notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the
10 following:

- 11 (1) The payment, purchase, and retirement of the bonds or notes being refunded
12 by direct application to the payment, purchase, and retirement.
13 (2) The payment, purchase, and retirement of the bonds or notes being refunded
14 by the deposit in trust of the proceeds.
15 (3) The payment of any expenses incurred in connection with the refunding.
16 (4) For any other uses not inconsistent with the refunding.

17 (b) The proceedings providing for the issuance of refunding bonds or notes may limit
18 the investments in which the proceeds of a particular refunding issue may be invested. Unless
19 prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in
20 trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested
21 in any of the following:

- 22 (1) Direct obligations of the United States of America.
23 (2) Obligations whose principal and interest are guaranteed by the United States
24 of America.
25 (3) Evidences of ownership of a proportionate interest in an obligation that is
26 described in subdivision (1) or (2) of this subsection and is held in a
27 custodial capacity by a bank or trust company organized under the laws of
28 the United States of America or a state.
29 (4) Obligations of the State or a unit of local government of the State when
30 payment of the principal of and interest on the obligations has been provided
31 for by depositing with a trustee or other escrow agent obligations that meet
32 all of the following:
33 a. Are described in subdivisions (1), (2), or (3) of this subsection.
34 b. When due and payable, will provide enough money when added to
35 any other money held in trust for this purpose to pay the principal of,
36 premium, if any, and interest on the State or local obligations.
37 c. Are rated in the highest category by Standard & Poor's Corporation
38 and Moody's Investors Service, Inc.
39 (5) Obligations of the State or a unit of local government when payment of the
40 principal and interest on the obligations is insured by a bond insurance
41 company rated in the highest category by Standard & Poor's Corporation and
42 Moody's Investors Service, Inc.
43 (6) Full faith and credit obligations of the State or a unit of local government of
44 the State that are rated in the highest category by Standard & Poor's
45 Corporation and Moody's Investors Service, Inc.
46 (7) Any obligations or investments in which the State Treasurer is then
47 authorized to invest funds of the State.

48 (c) This section does not limit any of the following:

- 49 (1) The period for which the proceeds of refunding bonds or notes may be held
50 in trust to retire the bonds or notes that are being refunded and have not

1 matured, are not redeemable or, if redeemable, have not been called for
2 redemption.

- 3 (2) The power to issue bonds or notes for the combined purpose of refunding
4 outstanding bonds or notes and of providing funds for any other corporate
5 purpose.

6 **"§ 77-127. Public hearing requirements.**

7 To the extent federal tax law requires public hearings to be held with respect to the issuance
8 of bonds to finance projects, the hearings may be called for by the executive director and held
9 before one or more members of the Board of the Trust. The hearings may be held at any place
10 within the State pursuant to public notice given in accordance with current federal tax
11 regulations. To the extent federal tax law requires approval following the hearing of the
12 issuance of bonds to finance a project, the approval shall be sought from the Governor
13 following a report to the Governor of the results of the public hearing accompanied by
14 information relating to the purposes for the proposed bond issue.

15 **"§ 77-128. Security documents.**

16 Bonds issued under the provisions of this Article may be secured by a security document
17 which may be a trust instrument between the Trust and a bank or trust company or individual
18 within the State, or a bank or a trust company outside the State, as trustee. The security
19 document may pledge and assign the revenues provided for the security of the bonds, including
20 proceeds from the sale of any project, or part thereof, and insurance proceeds, and may convey
21 or mortgage the project and other property to secure a bond issue.

22 The revenues and other funds derived from the project, except for any part as may be
23 necessary to provide reserves therefor, if any, may be set aside at regular intervals as may be
24 provided in the security document in a sinking fund which may be pledged to, and charged
25 with, the payment of the principal of and the interest on the bonds as the same shall become
26 due and the redemption price or the purchase price of bonds retired by call or purchase as
27 provided. The pledge shall be valid and binding from the time when the pledge is made. The
28 revenues pledged and received by the Trust shall immediately be subject to the lien of the
29 pledge without any physical delivery or further act, and the lien of any pledge shall be valid and
30 binding as against all parties having claims of any kind in tort, contract, or otherwise against
31 the Trust, irrespective of whether the parties have notice. The use and disposition of money to
32 the credit of the sinking fund shall be subject to the provisions of the security document. The
33 security document may contain provisions for protecting and enforcing the rights and remedies
34 of the bondholders as may be reasonable and proper and not in violation of law, including,
35 without limitation, any one or more of the following:

- 36 (1) Acceleration of all amounts payable under the security document.
37 (2) Appointment of a receiver to manage the project and any other property
38 mortgaged or assigned as security for the bonds.
39 (3) Foreclosure and sale of the project and any other property mortgaged or
40 assigned as security for the bonds.
41 (4) Rights to bring and maintain such other actions at law or in equity as may
42 appear necessary or desirable to collect the amounts payable under, or to
43 enforce the covenants made in, the security document.

44 It shall be lawful for any bank or trust company incorporated under the laws of this State
45 which may act as depository of the proceeds of bonds, revenues, or other funds provided under
46 this Article to furnish indemnifying bonds or to pledge securities as may be required by the
47 Trust. All expenses incurred in carrying out the provisions of the security document may be
48 treated as a part of the cost of the project in connection with which bonds are issued or as an
49 expense of administration of the project.

1 The Trust may subordinate the bonds or its rights under the security document or otherwise
2 to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other
3 security interest.

4 **"§ 77-129. Remedies.**

5 Any owner of bonds or notes issued under the provisions of this Article or any coupons
6 appertaining thereto, and the trustee under any trust agreement securing or resolution
7 authorizing the issuance of such bonds or notes, except to the extent the rights given may be
8 restricted by the trust agreement or resolution, may either at law or in equity, by suit, action,
9 mandamus, or other proceeding, protect and enforce any and all rights under the laws of the
10 State or granted hereunder or under the trust agreement or resolution, or under any other
11 contract executed by the Trust pursuant to this Article, and may enforce and compel the
12 performance of all duties required by this Article or by the trust agreement or resolution by the
13 Trust or by any officer of the Trust.

14 **"§ 77-130. Status of bonds and notes under Uniform Commercial Code.**

15 All bonds and notes and interest coupons, if any, issued under this Article are made
16 investment securities within the meaning of and for all the purposes of Article 8 of the Uniform
17 Commercial Code, as enacted in Chapter 25 of the General Statutes.

18 **"§ 77-131. Officers not liable.**

19 No director or officer of the Trust shall be subject to any personal liability or accountability
20 by reason of the director or officer's execution of any bonds or notes or the issuance of any
21 bonds or notes.

22 **"§ 77-132. Conflicts of interest.**

23 If any director, officer, or employee of the Trust shall be interested either directly or
24 indirectly, or shall be an officer or employee of or have an ownership interest in any firm or
25 corporation, not including units of local government, interested directly or indirectly, in any
26 contract with the Trust, the interest shall be disclosed to the Board and shall be set forth in the
27 minutes of the Board. The director, officer, or employee having an interest shall not participate
28 on behalf of the Trust in the authorization of any contract. Other provisions of law
29 notwithstanding, failure to take any or all actions necessary to carry out the purposes of this
30 section may not affect the validity of any bonds or notes issued under this Article.

31 **"§ 77-133. Cooperation by other State agencies.**

32 All State officers and agencies shall render the services to the Trust within their respective
33 functions as may be requested by the Trust.

34 **"§ 77-134. Net earnings; disposition and use.**

35 The Yadkin River Trust is a corporation completely owned by and to be operated for the
36 benefit of the people of this State. Any and all net earnings of the Yadkin River Trust not
37 necessary for the prudent conduct and operation of its business in the best interests of the Trust
38 or to pay the principal of and interest on its bonds, notes, or other evidences of indebtedness or
39 other obligations, or to fulfill the terms and provisions of any agreements made with the
40 purchasers or holders thereof or others shall be remitted semiannually to the State Treasurer for
41 deposit to the General Fund of the State. Nothing in this section shall prohibit the Trust from
42 paying to the State each year up to one percent (1%) of its projected operating revenues, as
43 such revenues would be determined on an accrual basis, from the combined electric and water
44 systems.

45 **"§ 77-135. Funds of Trust.**

46 All funds of the Trust shall be deposited in one or more banks to be designated by the
47 Board. The Funds shall be paid out only upon warrants signed by the treasurer or assistant
48 treasurer of the Trust and countersigned by the chair, the acting chair, or the executive director.
49 No warrants shall be drawn or issued disbursing any of the funds of the Trust except for a
50 purpose authorized by this Article and only when the account or expenditure has been audited
51 and approved by the Trust or the chairman of the board of directors.

1 **"§ 77-136. Exemption from taxation; payments in lieu of taxes.**

2 (a) Property owned by the Yadkin River Trust is exempt from taxation in accordance
3 with Article V, Section 2 of the North Carolina Constitution, except as provided in this section.

4 (b) The Trust shall pay annually to all counties, municipalities, and school districts in
5 which the Trust has acquired property a sum of money equivalent to the amount paid annually
6 for taxes on properties within these jurisdictions at the time of acquisition of the property by the
7 Trust. Payments shall be apportioned between the counties, municipalities, and school districts
8 in which the property is owned or an operation is carried on by the Trust on the basis of the
9 percentage of loss of property taxes to each. Payments in lieu of taxes shall only be made from
10 the Trust after: (i) payment of necessary operating expenses; (ii) payment of all annual debt
11 requirements on bonds, notes, or other obligations at any time outstanding; and (iii) the
12 discharge of all annual obligations arising under finance agreements with the United States or
13 any agency or corporation of the United States and indentures or other instruments under which
14 bonds have been, or may be issued.

15 **"§ 77-137. Annual budget and report.**

16 The Yadkin River Trust shall submit a budget for the upcoming fiscal year and a report
17 regarding its operations and transactions for the preceding fiscal year to the Joint Legislative
18 Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and
19 the House and Senate Committees on Appropriations on or before July 1 of each year. The
20 annual report shall include, but not be limited to, the following information: (i) the amount of
21 power and energy produced by the Trust; (ii) financial and operating information for the Trust
22 during the preceding fiscal year including income and expense statements, balance sheets, and
23 changes in financial position, debt structure, and a summary of funds on a cash basis, all in
24 accordance with generally accepted accounting principles; and (iii) the price of power and
25 energy sold by the Trust."

26 **SECTION 2.** Notwithstanding G.S. 77-122(b), as enacted by Section 1 of this act,
27 in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River
28 Trust, the terms of the initial appointments of the directors made by the Governor shall be made
29 as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three
30 years; and (iii) three shall be for a period of four years.

31 **SECTION 3.** This act becomes effective July 1, 2009.