

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1634*
Committee Substitute Favorable 6/19/92

Short Title: Jt. Agency Authority.

(Public)

Sponsors:

Referred to:

June 8, 1992

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE JOINT AGENCIES TO PROVIDE AID AND
3 ASSISTANCE TO MUNICIPALITIES AND JOINT MUNICIPAL ASSISTANCE
4 AGENCIES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY
5 REVIEW COMMITTEE AND TO CLARIFY THE AUTHORITY TO INVEST
6 JOINT AGENCY FUNDS.

7 The General Assembly of North Carolina enacts:

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

9 "§ 159B-2. Legislative findings and purposes.

10 The General Assembly hereby finds and determines that:

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

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

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

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

21 In the absence of further material increases in electric rates, additional
22 postponements and curtailments in the construction of additional generation and

1 transmission facilities may occur, thereby impairing those utilities' ability to continue to
2 provide an adequate and reliable source of electric power and energy in the State;

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

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

10 In order to achieve the economies and efficiencies made possible by the proper
11 planning, financing, sizing and location of facilities for the generation and transmission
12 of electric power and energy which are not practical for any municipality acting alone,
13 and to insure an adequate, reliable and economical supply of electric power and energy
14 to the people of the State, it is desirable for the State of North Carolina to authorize
15 municipal electric systems to jointly plan, finance, develop, own and operate electric
16 generation and transmission facilities appropriate to their needs in order to provide for
17 their present and future power requirements for all uses without supplanting or
18 displacing the service at retail of other electric suppliers operating in the State; and

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

25 In addition to the authority granted municipalities to jointly plan, finance, develop,
26 own and operate electric generation and transmission facilities by Article 2 of this
27 Chapter and the other powers granted in said Article 2, and in addition and
28 supplemental to powers otherwise conferred on municipalities by the laws of this State
29 for interlocal cooperation, it is desirable for the State of North Carolina to authorize
30 municipalities to form joint municipal assistance agencies which shall be empowered to
31 provide aid and assistance to municipalities in the construction, ownership,
32 maintenance, expansion and operation of their electric systems, and to empower joint
33 agencies authorized herein to provide aid and assistance to municipalities or joint
34 municipal assistance agencies in the development and implementation of integrated
35 resource planning, including, but not limited to, the evaluation of resources, generating
36 facilities, alternative energy resources, conservation and load management programs,
37 transmission and distribution facilities, and purchase power options, and in the
38 development, construction and operation of supply-side and demand-side resources, and
39 in such other ways in addition to exercising such other powers as hereinafter provided to
40 joint municipal assistance agencies and joint agencies. In order to provide maximum
41 economies and efficiencies to municipalities and the consuming public in the generation
42 and transmission of electric power and energy contemplated by Article 2 of this
43 Chapter, it is also desirable that the joint municipal assistance agencies authorized
44 herein be empowered to act as provided in Article 3 of this Chapter and that such

1 agency or agencies be empowered to act for and on behalf of any one or more
2 municipalities, as requested, with respect to the construction, ownership, maintenance,
3 expansion and operation of their electric systems; and that the joint agencies authorized
4 herein be empowered to act as provided in Article 2 of this Chapter and that such
5 agency or agencies be empowered to act for and on behalf of any one or more
6 municipalities or joint municipal assistance agencies, in each case as requested, with
7 respect to the integrated resource planning and development, construction, and
8 operation of supply-side and demand-side options described above."

9 Sec. 2. G.S. 159B-11 reads as rewritten:

10 **"§ 159B-11. General powers of joint agencies; prerequisites to undertaking**
11 **projects.**

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

- 15 (1) To adopt bylaws for the regulation of the affairs and the conduct of its
16 business, and to prescribe rules, regulations and policies in connection
17 with the performance of its functions and duties;
- 18 (2) To adopt an official seal and alter the same at pleasure;
- 19 (3) To acquire and maintain an administrative building or office at such
20 place or places as it may determine, which building or office may be
21 used or owned alone or together with any other joint agency or
22 agencies, joint municipal assistance agency, municipalities,
23 corporations, associations or persons under such terms and provisions
24 for sharing costs and otherwise as may be determined;
- 25 (4) To sue and be sued in its own name, and to plead and be impleaded;
- 26 (5) To receive, administer and comply with the conditions and
27 requirements respecting any gift, grant or donation of any property or
28 money;
- 29 (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options
30 for the acquisition of, any property, real or personal, improved or
31 unimproved, including an interest in land less than the fee thereof;
- 32 (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant
33 options for any such purposes with respect to, any real or personal
34 property or interest therein;
- 35 (8) To pledge, assign, mortgage or otherwise grant a security interest in
36 any real or personal property or interest therein, including the right and
37 power to pledge, assign or otherwise grant a security interest in any
38 money, rents, charges or other revenues and any proceeds derived by
39 the joint agency from the sales of property, insurance or condemnation
40 awards.
- 41 (9) To issue bonds of the joint agency for the purpose of providing funds
42 for any of its corporate purposes;
- 43 (10) To study, plan, finance, construct, reconstruct, acquire, improve,
44 enlarge, extend, better, own, operate and maintain one or more

1 projects, either individually or jointly with one or more municipalities
2 in this State or any state contiguous to this State owning electric
3 distribution facilities or with any political subdivisions, agencies or
4 instrumentalities of any state contiguous to this State or with other
5 joint agencies created pursuant to this Chapter, and to pay all or any
6 part of the costs thereof from the proceeds of bonds of the joint agency
7 or from any other funds made available to the joint agency;

8 (11) To authorize the construction, operation or maintenance of any project
9 or projects by any person, firm or corporation, including political
10 subdivisions and agencies of any state, or of the United States;

11 (12) To acquire by private negotiated purchase or lease or otherwise an
12 existing project, a project under construction, or other property, either
13 individually or jointly, with one or more municipalities in this State or
14 any state contiguous to this State owning electric distribution facilities
15 or with any political subdivisions, agencies or instrumentalities of any
16 state contiguous to this State or with other joint agencies created
17 pursuant to this Chapter; to acquire by private negotiated purchase or
18 lease or otherwise any facilities for the development, production,
19 manufacture, procurement, handling, storage, fabrication, enrichment,
20 processing or reprocessing of fuel of any kind or any facility or rights
21 with respect to the supply of water, and to enter into agreements by
22 private negotiation or otherwise, for a period not exceeding fifty (50)
23 years, for the development, production, manufacture, procurement,
24 handling, storage, fabrication, enrichment, processing or reprocessing
25 of fuel of any kind or any facility or rights with respect to the supply of
26 water; no provisions of law with respect to the acquisition,
27 construction or operation of property by other public bodies shall be
28 applicable to any agency created pursuant to this Chapter unless the
29 legislature shall specifically so state;

30 (13) To dispose of by private negotiated sale or lease, or otherwise an
31 existing project, a project under construction, or other property either
32 individually or jointly with one or more municipalities in this State or
33 any state contiguous to this State owning electric distribution facilities
34 or with any political subdivisions, agencies or instrumentalities of any
35 state contiguous to this State or with other joint agencies created
36 pursuant to this Chapter; to dispose of by private negotiated sale or
37 lease, or otherwise any facilities for the development, production,
38 manufacture, procurement, handling, storage, fabrication, enrichment,
39 processing or reprocessing of fuel of any kind or any facility or rights
40 with respect to the supply of water; no provisions of law with respect
41 to the disposition of property by other public bodies shall be applicable
42 to an agency created pursuant to this Chapter unless the legislature
43 shall specifically so state;

- 1 (14) To fix, charge and collect rents, rates, fees and charges for electric
2 power or energy and other services, facilities and commodities sold,
3 furnished or supplied through any project;
- 4 (15) To generate, produce, transmit, deliver, exchange, purchase, or sell for
5 resale only, electric power or energy, and to enter into contracts for
6 any or all such purposes;
- 7 (16) To negotiate and enter into contracts for the purchase, sale, exchange,
8 interchange, wheeling, pooling, transmission or use of electric power
9 and energy with any municipality in this State or any other state
10 owning electric distribution facilities or with any political
11 subdivisions, agencies or instrumentalities of any other state or with
12 other joint agencies created pursuant to this Chapter, any electric
13 membership corporation, any public utility, and any state, federal or
14 municipal agency which owns electric generation, transmission or
15 distribution facilities in this State or any other state;
- 16 (17) To make and execute contracts and other instruments necessary or
17 convenient in the exercise of the powers and functions of the joint
18 agency under this Chapter, including contracts with persons, firms,
19 corporations and others;
- 20 (18) To apply to the appropriate agencies of the State, the United States or
21 any state thereof, and to any other proper agency for such permits,
22 licenses, certificates or approvals as may be necessary, and to
23 construct, maintain and operate projects in accordance with such
24 licenses, permits, certificates or approvals, and to obtain, hold and use
25 such licenses, permits, certificates and approvals in the same manner
26 as any other person or operating unit of any other person;
- 27 (19) To employ engineers, architects, attorneys, real estate counselors,
28 appraisers, financial advisors and such other consultants and
29 employees as may be required in the judgment of the joint agency and
30 to fix and pay their compensation from funds available to the joint
31 agency therefor and to select and retain subject to approval of the
32 Local Government Commission the financial consultants, underwriters
33 and bond attorneys to be associated with the issuance of any bonds and
34 to pay for services rendered by underwriters, financial consultants or
35 bond attorneys out of the proceeds of any such issue with regard to
36 which the services were performed; ~~and~~
- 37 (19a) To purchase power and energy, and services and facilities relating
38 to the utilization of power and energy, from any source on behalf of
39 its members and other customers and to furnish, sell, lease,
40 exchange, transfer, or otherwise dispose of, or to grant options for
41 any such purposes with respect to the same, to its members and
42 other customers in such amounts, with such characteristics, for
43 such periods of time and under such terms and conditions as the
44 board of commissioners of the joint agency shall determine;

1 (19b) To provide aid and assistance to municipalities, and to act for or on
2 behalf of any municipality, in any activity related to the
3 development and implementation of integrated resource planning,
4 including, but not limited to, the evaluation of resources,
5 generating facilities, alternative energy resources, conservation and
6 load management programs, transmission and distribution
7 facilities, and purchased power options, and related to the
8 development, construction and operation of supply-side and
9 demand-side resources, and to do such other acts and things as
10 provided in Article 3 of this Chapter as if the joint agency were a
11 joint municipal assistance agency, and to carry out the powers
12 granted in this Chapter in relation thereto; to provide aid and
13 assistance to any joint municipal assistance agency in the exercise
14 of its respective powers and functions; and

15 (20) To do all acts and things necessary, convenient or desirable to carry
16 out the purposes, and to exercise the powers granted to the joint
17 agency therein.

18 No joint agency shall undertake any project required to be financed, in whole or in
19 part, with the proceeds of bonds without the approval of a majority of its members.
20 Before undertaking any project, a joint agency shall, based upon engineering studies and
21 reports, determine that such project is required to provide for the projected needs for
22 power and energy of its members from and after the date the project is estimated to be
23 placed in normal and continuous operation and for a reasonable period of time
24 thereafter. Prior to or simultaneously with granting a certificate of public convenience
25 and necessity for any such project the North Carolina Utilities Commission, in a
26 proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such
27 determination. In determining the future power requirements of the members of a joint
28 agency, there shall be taken into account the following:

29 (1) The economies and efficiencies to be achieved in constructing on a
30 large scale facilities for the generation and transmission of electric
31 power and energy;

32 (2) Needs of the joint agency for reserve and peaking capacity and to
33 meet obligations under pooling and reserve-sharing agreements
34 reasonably related to its needs for power and energy to which the
35 joint agency is or may become a party;

36 (3) The estimated useful life of such project;

37 (4) The estimated time necessary for the planning, development,
38 acquisition, or construction of such project and the length of time
39 required in advance to obtain, acquire or construct additional power
40 supply for the members of the joint agency;

41 (5) The reliability and availability of existing alternative power supply
42 sources and the cost of such existing alternative power supply
43 sources.

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

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

9 Sec. 3. G.S. 159B-12 reads as rewritten:

10 "**§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a**
11 **joint agency.**

12 Any municipality which is a member of the joint agency may contract to buy from
13 the joint agency power and energy for its present or future requirements, including the
14 capacity and output of one of more specified projects. As the creation of a joint agency
15 is an alternative method whereby a municipality may obtain the benefits and assume the
16 responsibilities of ownership in a project, any such contract may provide that the
17 municipality so contracting shall be obligated to make the payments required by the
18 contract whether or not a project is completed, operable or operating and
19 notwithstanding the suspension, interruption, interference, reduction or curtailment of
20 the output of a project or the power and energy contracted for, and that such payments
21 under the contract shall not be subject to any reduction, whether by offset or otherwise,
22 and shall not be conditioned upon the performance or nonperformance of the joint
23 agency or any other member of the joint agency under the contract or any other
24 instrument. Any contract with respect to the sale or purchase of capacity or output of a
25 project entered into between a joint agency and its member municipalities may also
26 provide that if one or more of such municipalities shall default in the payment of its or
27 their obligations with respect to the purchase of said capacity or output, then in that
28 event the remaining member municipalities which are purchasing capacity and output
29 under the contract shall be required to accept and pay for and shall be entitled
30 proportionately to and may use or otherwise dispose of the capacity or output which was
31 to be purchased by the defaulting municipality.

32 Notwithstanding the provisions of any other law to the contrary, any such contract
33 with respect to the sale or purchase of capacity, output, power or energy from a project
34 may extend for a period not exceeding 50 years from the date a project is estimated to
35 be placed in normal continuous operation. Notwithstanding the provisions of any law to
36 the contrary, including, but not limited to, the provisions of G.S. 159B-44(13), any
37 contract between a joint agency and a municipality or a joint municipal assistance
38 agency (or between a municipality and a joint municipal assistance agency) to provide
39 aid and assistance in the development and implementation of integrated resource
40 planning, and the development, construction, and operation of supply-side and demand-
41 side resources, and any contract providing for payments by any municipality directly to
42 any joint agency (or indirectly to any joint agency through a joint municipal assistance
43 agency) or by any joint municipal assistance agency to any joint agency for the
44 provision of aid and assistance in the development and implementation of integrated

1 resource planning, and the development, construction, and operation of supply-side and
2 demand-side resources, may extend for a period not exceeding 30 years; provided, that
3 any such contract in respect of a capital project to be used by or for the benefit of a
4 municipality shall be subject to the prior approval of the Local Government
5 Commission of North Carolina. In reviewing any such contract for approval, said Local
6 Government Commission shall consider the municipality's debt management procedures
7 and policies, whether the municipality is in default with respect to its debt service
8 obligations and such other matters as said Local Government Commission may believe
9 to have a bearing on whether the contract should be approved. Notwithstanding the
10 provisions of any law to the contrary, the execution and effectiveness of any such
11 contracts with respect to the sale or purchase of capacity, output, power or energy from
12 a project, or of any contracts with respect to the purchase or disposition of power and
13 energy and services and facilities related to the utilization of power and energy, or of
14 any contracts with a municipality or joint municipal assistance agency to provide aid
15 and assistance in the development and implementation of integrated resource planning,
16 and the development, construction, and operation of supply-side and demand-side
17 resources, shall not be subject to any authorizations or approvals by the State or any
18 agency, commission or instrumentality or political subdivision thereof except as in this
19 Chapter specifically required and provided.

20 Payments by a municipality under any contract for the purchase of capacity, output,
21 or power or energy or services and facilities related to the utilization of power and
22 energy, from a joint agency, and payments by any municipality directly to any joint
23 agency (or indirectly to any joint agency through a joint municipal assistance agency)
24 under any contract or contracts to provide aid and assistance in the development and
25 implementation of integrated resource planning, and the development, construction, and
26 operation of supply-side and demand-side resources, shall be made solely from the
27 revenues derived from the ownership and operation of the electric system of said
28 municipality and any obligation under such contract shall not constitute a legal or
29 equitable pledge, charge, lien, or encumbrance upon any property of the municipality or
30 upon any of its income, receipts, or revenues, except the revenues of its electric system,
31 and neither the faith and credit nor the taxing power of the municipality are, or may be,
32 pledged for the payment of any obligation under any such contract. A municipality shall
33 be obligated to fix, charge and collect rents, rates, fees and charges for electric power
34 and energy and other services, facilities and commodities sold, furnished or supplied
35 through its electric system sufficient to provide revenues adequate to meet its
36 obligations under any such contract and to pay any and all other amounts payable from
37 or constituting a charge and lien upon such revenues, including amounts sufficient to
38 pay the principal of and interest on general obligation bonds heretofore or hereafter
39 issued by the municipality for purposes related to its electric system.

40 Payments by any joint municipal assistance agency to any joint agency under any
41 contract or contracts to provide aid and assistance in the development and
42 implementation of integrated resource planning, and the development, construction, and
43 operation of supply-side and demand-side resources, shall be made solely from the
44 sources specified in such contract or contracts and no other, and any obligation under

1 such contract shall not constitute a legal or equitable pledge, charge, lien, or
2 encumbrance upon any property of the joint municipal assistance agency or upon any of
3 its income, receipts, or revenues, except such sources so specified, or upon any property
4 of any municipality with which the joint municipal assistance agency contracts or upon
5 any of such municipality's income, receipts, or revenues except the revenues of such
6 municipality's electric system. A joint municipal assistance agency shall be obligated to
7 fix, charge and collect rents, rates, fees, and charges for providing aid and assistance
8 sufficient to provide revenues adequate to meet its obligations under such contract.

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

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

19 Sec. 4. G.S. 159B-17(c) reads as rewritten:

20 "(c) Any pledge of revenues, securities or other moneys made by a ~~municipality or~~
21 municipality, joint agency or joint municipal assistance agency pursuant to this Chapter
22 shall be valid and binding from the date the pledge is made. The revenues, securities,
23 and other moneys so pledged and then held or thereafter received by the ~~municipality or~~
24 municipality, joint agency or joint municipal assistance agency or any fiduciary shall
25 immediately be subject to the lien of the pledge without any physical delivery thereof or
26 further act, and the lien of the pledge shall be valid and binding as against all parties
27 having claims of any kind in tort, contract, or otherwise against the ~~municipality or~~
28 municipality, joint agency or joint municipal assistance agency without regard to
29 whether such parties have notice thereof. The resolution or trust agreement or any
30 financing statement, continuation statement or other instrument by which a pledge of
31 revenues, securities or other moneys is created need not be filed or recorded in any
32 manner."

33 Sec. 5. G.S. 159B-18 reads as rewritten:

34 "**§ 159B-18. Trust funds. ~~funds~~; investment authority.**

35 (a) Notwithstanding any other provisions of law to the contrary, all moneys
36 received pursuant to the authority of this Chapter, whether as proceeds from the sale of
37 bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as
38 provided in this Chapter. The resolution authorizing the bonds of any issue or the trust
39 agreement securing such bonds may provide that any of such moneys may be
40 temporarily invested and reinvested pending the disbursements thereof in such
41 securities and other investments as shall be provided in such resolution or trust
42 agreement, and shall provide that any officer with whom, or any bank or trust company
43 with which, such moneys shall be deposited shall act as trustee of such moneys and

1 shall hold and apply the same for the purposes hereof, subject to such regulation as this
2 Chapter and such resolution or trust agreement may provide.

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

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

6 (2) As provided in G.S. 159-30;

7 (3) In mortgage-backed pass-through securities guaranteed by the
8 Government National Mortgage Association, the Federal Home
9 Loan Mortgage Corporation, or the Federal National Mortgage
10 Association, which securities shall mature or be redeemable at the
11 option of the holder within 10 years from the date of investment;

12 (4) In direct or indirect obligations which are collateralized by or
13 represent beneficial ownership interests in mortgage-backed pass-
14 through securities guaranteed by the Government National
15 Mortgage Association, the Federal Home Loan Mortgage
16 Corporation, or the Federal National Mortgage Association, which
17 obligations shall mature or be redeemable at the option of the
18 holder within 10 years from the date of investment; and

19 (5) In direct or indirect obligations, trust certificates, or other similar
20 instruments which are (i) guaranteed by the Government National
21 Mortgage Association, the Federal Home Loan Mortgage
22 Corporation, or the Federal National Mortgage Association, and (ii)
23 collateralized by or represent beneficial ownership interests in
24 mortgage-backed pass-through securities which are guaranteed by
25 the Government National Mortgage Association, the Federal
26 Home Loan Mortgage Corporation, or the Federal National
27 Mortgage Association, including but not limited to Real Estate
28 Mortgage Investment Conduit Certificates, and which obligation,
29 trust certificates or other similar instruments shall mature or be
30 redeemable at the option of the holder within 10 years from the
31 date of investment."

32 Sec. 6. Section 5 of this act is intended to provide additional and alternative
33 methods for investment and shall be regarded as supplemental and additional to powers
34 conferred by any other laws, and shall not be regarded as being in derogation of any
35 powers now existing.

36 Sec. 7. Beginning January 1, 1994, and annually thereafter, each joint agency
37 operating under the authority of Chapter 159B of the General Statutes shall file a report
38 with the Joint Legislative Utility Review Committee describing the activities of the joint
39 agency carried out pursuant to the authority granted by Sections 1 through 4 of this act.
40 The report shall cover the preceding calendar year. Each joint agency shall file such
41 additional reports as the Joint Legislative Utility Review Committee shall request.

42 Sec. 8. This act is effective upon ratification.