

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 1193*

Short Title: Jt. Agency Authority.

(Public)

Sponsors: Senators Johnson; Simpson and Smith.

Referred to: Public Utilities.

June 4, 1992

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE JOINT AGENCIES TO PROVIDE AID AND
2 ASSISTANCE TO MUNICIPALITIES AND JOINT MUNICIPAL ASSISTANCE
3 AGENCIES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY
4 REVIEW COMMITTEE.
5

6 The General Assembly of North Carolina enacts:

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

8 "**§ 159B-2. Legislative findings and purposes.**

9 The General Assembly hereby finds and determines that:

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

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

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

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

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

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

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

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

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

23 In addition to the authority granted municipalities to jointly plan, finance, develop,
24 own and operate electric generation and transmission facilities by Article 2 of this
25 Chapter and the other powers granted in said Article 2, and in addition and
26 supplemental to powers otherwise conferred on municipalities by the laws of this State
27 for interlocal cooperation, it is desirable for the State of North Carolina to authorize
28 municipalities to form joint municipal assistance agencies which shall be empowered to
29 provide aid and assistance to municipalities in the construction, ownership,
30 maintenance, expansion and operation of their electric systems, and to empower joint
31 agencies authorized herein to provide aid and assistance to municipalities or joint
32 municipal assistance agencies in the construction, ownership, maintenance, expansion,
33 and operation of electric systems, and in such other ways in addition to such other powers
34 as hereinafter provided to joint municipal assistance agencies and joint agencies. In
35 order to provide maximum economies and efficiencies to municipalities and the
36 consuming public in the generation and transmission of electric power and energy
37 contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal
38 assistance agencies authorized herein be empowered to act as provided in Article 3 of
39 this Chapter and that such agency or agencies be empowered to act for and on behalf of
40 any one or more municipalities, as requested, with respect to the construction,
41 ownership, maintenance, expansion and operation of their electric systems; and that the
42 joint agencies authorized herein be empowered to act as provided in Article 2 of this
43 Chapter and that such agency or agencies be empowered to act for and on behalf of any
44 one or more municipalities or joint municipal assistance agencies, in each case as

1 requested, with respect to the construction, ownership, maintenance, expansion, and
2 operation of such municipalities' electric systems."

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

4 **"§ 159B-11. General powers of joint agencies; prerequisites to undertaking**
5 **projects.**

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

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

- 1 part of the costs thereof from the proceeds of bonds of the joint agency
2 or from any other funds made available to the joint agency;
- 3 (11) To authorize the construction, operation or maintenance of any project
4 or projects by any person, firm or corporation, including political
5 subdivisions and agencies of any state, or of the United States;
- 6 (12) To acquire by private negotiated purchase or lease or otherwise an
7 existing project, a project under construction, or other property, either
8 individually or jointly, with one or more municipalities in this State or
9 any state contiguous to this State owning electric distribution facilities
10 or with any political subdivisions, agencies or instrumentalities of any
11 state contiguous to this State or with other joint agencies created
12 pursuant to this Chapter; to acquire by private negotiated purchase or
13 lease or otherwise any facilities for the development, production,
14 manufacture, procurement, handling, storage, fabrication, enrichment,
15 processing or reprocessing of fuel of any kind or any facility or rights
16 with respect to the supply of water, and to enter into agreements by
17 private negotiation or otherwise, for a period not exceeding fifty (50)
18 years, for the development, production, manufacture, procurement,
19 handling, storage, fabrication, enrichment, processing or reprocessing
20 of fuel of any kind or any facility or rights with respect to the supply of
21 water; no provisions of law with respect to the acquisition,
22 construction or operation of property by other public bodies shall be
23 applicable to any agency created pursuant to this Chapter unless the
24 legislature shall specifically so state;
- 25 (13) To dispose of by private negotiated sale or lease, or otherwise an
26 existing project, a project under construction, or other property either
27 individually or jointly with one or more municipalities in this State or
28 any state contiguous to this State owning electric distribution facilities
29 or with any political subdivisions, agencies or instrumentalities of any
30 state contiguous to this State or with other joint agencies created
31 pursuant to this Chapter; to dispose of by private negotiated sale or
32 lease, or otherwise any facilities for the development, production,
33 manufacture, procurement, handling, storage, fabrication, enrichment,
34 processing or reprocessing of fuel of any kind or any facility or rights
35 with respect to the supply of water; no provisions of law with respect
36 to the disposition of property by other public bodies shall be applicable
37 to an agency created pursuant to this Chapter unless the legislature
38 shall specifically so state;
- 39 (14) To fix, charge and collect rents, rates, fees and charges for electric
40 power or energy and other services, facilities and commodities sold,
41 furnished or supplied through any project;
- 42 (15) To generate, produce, transmit, deliver, exchange, purchase, or sell for
43 resale only, electric power or energy, and to enter into contracts for
44 any or all such purposes;

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

1 responsibilities granted in this Chapter in relation thereto; to
2 provide aid and assistance to any joint municipal assistance agency
3 in the exercise of its respective powers and functions; which term
4 'provide aid and assistance' shall be liberally construed; and

- 5 (20) To do all acts and things necessary, convenient or desirable to carry
6 out the purposes, and to exercise the powers granted to the joint
7 agency therein.

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

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

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

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

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

43 "**§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a**
44 **joint agency.**

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

21 Notwithstanding the provisions of any other law to the contrary, any such contract
22 with respect to the sale or purchase of capacity, output, power or energy from a project
23 may extend for a period not exceeding 50 years from the date a project is estimated to
24 be placed in normal continuous operation. Notwithstanding the provisions of any law to
25 the contrary, including, but not limited to, the provisions of Section 159B-44(13), any
26 contract between a joint agency and a municipality or a joint municipal assistance
27 agency (or between a municipality and a joint municipal assistance agency) to provide
28 aid and assistance, and any contract providing for payments by any municipality
29 directly to any joint agency (or indirectly to any joint agency through a joint municipal
30 assistance agency) or by any joint municipal assistance agency to any joint agency for
31 the provision of aid and assistance, may extend for a period not exceeding 30 years.
32 Notwithstanding the provisions of any law to the contrary, the execution and
33 effectiveness of any such contracts with respect to the sale or purchase of capacity,
34 output, power or energy from a project, or of any contracts with respect to the purchase
35 or disposition of power and energy and services and facilities related to the utilization of
36 power and energy, or of any contracts with a municipality or joint municipal assistance
37 agency to provide aid and assistance, shall not be subject to any authorizations or
38 approvals by the State or any agency, commission or instrumentality or political
39 subdivision thereof except as in this Chapter specifically required and provided.

40 Payments by a municipality under any contract for the purchase of capacity, output,
41 or power or energy or services and facilities related to the utilization of power and
42 energy, from a joint agency, and payments by any municipality directly to any joint
43 agency (or indirectly to any joint agency through a joint municipal assistance agency)
44 under any contract or contracts to provide aid and assistance, shall be made solely from

1 the revenues derived from the ownership and operation of the electric system of said
2 municipality and any obligation under such contract shall not constitute a legal or
3 equitable pledge, charge, lien, or encumbrance upon any property of the municipality or
4 upon any of its income, receipts, or revenues, except the revenues of its electric system,
5 and neither the faith and credit nor the taxing power of the municipality are, or may be,
6 pledged for the payment of any obligation under any such contract. A municipality shall
7 be obligated to fix, charge and collect rents, rates, fees and charges for electric power
8 and energy and other services, facilities and commodities sold, furnished or supplied
9 through its electric system sufficient to provide revenues adequate to meet its
10 obligations under any such contract and to pay any and all other amounts payable from
11 or constituting a charge and lien upon such revenues, including amounts sufficient to
12 pay the principal of and interest on general obligation bonds heretofore or hereafter
13 issued by the municipality for purposes related to its electric system.

14 Payments by any joint municipal assistance agency to any joint agency under any
15 contract or contracts to provide aid and assistance shall be made solely from the sources
16 specified in such contract or contracts and no other, and any obligation under such
17 contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance
18 upon any property of the joint municipal assistance agency or upon any of its income,
19 receipts, or revenues, except such sources so specified, or upon any property of any
20 municipality with which the joint municipal assistance agency contracts or upon any of
21 such municipality's income, receipts, or revenues except the revenues of such
22 municipality's electric system. A joint municipal assistance agency shall be obligated to
23 fix, charge and collect rents, rates, fees, and charges for providing aid and assistance
24 sufficient to provide revenues adequate to meet its obligations under such contract.

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

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

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

36 "(c) Any pledge of revenues, securities or other moneys made by a ~~municipality or~~
37 municipality, joint agency or joint municipal assistance agency pursuant to this Chapter
38 shall be valid and binding from the date the pledge is made. The revenues, securities,
39 and other moneys so pledged and then held or thereafter received by the ~~municipality or~~
40 municipality, joint agency or joint municipal assistance agency or any fiduciary shall
41 immediately be subject to the lien of the pledge without any physical delivery thereof or
42 further act, and the lien of the pledge shall be valid and binding as against all parties
43 having claims of any kind in tort, contract, or otherwise against the ~~municipality or~~
44 municipality, joint agency or joint municipal assistance agency without regard to

1 whether such parties have notice thereof. The resolution or trust agreement or any
2 financing statement, continuation statement or other instrument by which a pledge of
3 revenues, securities or other moneys is created need not be filed or recorded in any
4 manner."

5 Sec. 5. Beginning January 1, 1994, and annually thereafter, each joint agency
6 operating under the authority of Chapter 159B of the General Statutes shall file a report
7 with the Joint Legislative Utility Review Committee describing the activities of the joint
8 agency carried out pursuant to the authority granted by this act. The report shall cover
9 the preceding calendar year. Each joint agency shall file such additional reports as the
10 Joint Legislative Utility Review Committee shall request.

11 Sec. 6. This act is effective upon ratification.