

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH50408-RIxf-22 (03/26)

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

Sponsors: Representatives Burr and Goodwin (Primary Sponsors).

Referred to:

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.



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

1           (10) Security document. – One or more written instruments establishing the rights  
2 and responsibilities of the Trust and the holders of bonds issued to finance  
3 the hydroelectric project. A security document may provide for, or be in the  
4 form of an agreement with, a trustee for the benefit of the bondholders. A  
5 security document may contain an assignment, pledge, mortgage, or other  
6 encumbrance of part or all of the Trust's interest in, or right to receive  
7 revenues from, the hydroelectric project.

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

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

12 **§ 77-122. Board of Directors.**

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

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

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

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

44           (e) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other  
45 reason in the office of any director prior to the expiration of the director's term of office, the  
46 name of the director's successor shall be submitted by the Governor within four weeks after the  
47 vacancy arises to the General Assembly for confirmation by the General Assembly. Upon  
48 failure of the Governor to submit the name of the successor, the President Pro Tempore of the  
49 Senate and the Speaker of the House of Representatives jointly shall submit the name of a  
50 successor to the General Assembly within six weeks after the vacancy arises. Regardless of the  
51 way in which the names of directors are submitted, confirmation of directors must be

1 accomplished prior to the adjournment of the then current session of the General Assembly. If a  
2 vacancy arises in the office of director when the General Assembly is not in session, and the  
3 appointment is deemed urgent by the Governor, the director may be appointed and serve on an  
4 interim basis pending confirmation by the General Assembly.

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

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

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

18 (i) Executive Director and Other Employees. – The Board shall appoint an executive  
19 director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive  
20 director or a person designated by the executive director shall appoint, employ, dismiss, and,  
21 within the limits of available funding, fix the compensation of other employees as considered  
22 necessary. Due to the expertise and experience of employees and former employees of the  
23 Yadkin Project, the executive director or the executive director's designee shall give every due  
24 consideration to employment of these individuals.

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

28 **"§ 77-123. Authority to acquire Yadkin Project.**

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

37 **"§ 77-124. Powers and duties.**

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

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

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

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

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

1 employees, adjoining property owners, or the general public against loss or  
2 liability resulting from any act or omission by or on behalf of the Trust.

3 (20) To purchase or finance real or personal property in the manner provided for  
4 cities and counties under G.S. 160A-20.

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

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

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

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

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

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

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

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

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

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

46 (6) Extend the recreation season at High Rock Lake and Badin Lake by three  
47 months from April 1 to October 31.

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

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

25   **§ 77-125. Bonds and notes.**

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

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

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

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

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

- 47           (1)    Be payable from time to time on demand or tender for purchase by the  
48           owner of the bond or note if a credit facility supports the bond or note,  
49           unless the Local Government Commission specifically determines that a  
50           credit facility is not required because the absence of a credit facility will not

1 materially and adversely affect the financial position of the Trust and the  
2 marketing of the bonds or notes at a reasonable interest cost to the Trust.

3 (2) Be additionally supported by a credit facility.

4 (3) Be made subject to redemption or a mandatory tender for purchase prior to  
5 maturity.

6 (4) Be capital appreciation bonds.

7 (5) Bear interest at a rate or rates that may vary, including variations permitted  
8 pursuant to a par formula.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 When the Local Government Commission approves a bond or note issue of the Trust, the  
2 Trust may submit a written request to the Local Government Commission to sell the approved  
3 bonds or notes. Upon receiving a written request, the Local Government Commission shall  
4 consult with the Trust on the manner in which the bonds or notes will be sold and the price or  
5 prices at which the bonds or notes will be sold. With the approval of the Trust, the Local  
6 Government Commission shall sell the bonds or notes either at public or private sale in the  
7 manner and at the prices determined to be in the best interest of the Trust and to effect the  
8 purposes of this Article.

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

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

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

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

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

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

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

50 In connection with or incidental to the acquisition or carrying of any investment relating to  
51 bonds, program of investment relating to bonds, or carrying of bonds, the Trust may, with the

1 approval of the Local Government Commission, enter into a contract to place the investment or  
2 obligation of the Trust, as represented by the bonds, investment, or program of investment and  
3 the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other  
4 basis, including the following:

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

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

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

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

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

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

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

48 (o) Obligations issued under this Article are made securities in which all public officers  
49 and public bodies of the State and its political subdivisions, and all insurance companies, trust  
50 companies, banking associations, investment companies, executors, administrators, trustees,  
51 and other fiduciaries may properly and legally invest funds, including capital in their control or

1 belonging to them. The obligations are made securities that may properly and legally be  
2 deposited with and received by any State or municipal officer or any agency or political  
3 subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of  
4 the State is now or may be authorized by law.

5 **"§ 77-126. Refunding bonds or notes.**

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

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

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

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

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

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

2 (1) The period for which the proceeds of refunding bonds or notes may be held  
3 in trust to retire the bonds or notes that are being refunded and have not  
4 matured, are not redeemable or, if redeemable, have not been called for  
5 redemption.

6 (2) The power to issue bonds or notes for the combined purpose of refunding  
7 outstanding bonds or notes and of providing funds for any other corporate  
8 purpose.

9 **"§ 77-127. Public hearing requirements.**

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

18 **"§ 77-128. Security documents.**

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

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

39 (1) Acceleration of all amounts payable under the security document.

40 (2) Appointment of a receiver to manage the project and any other property  
41 mortgaged or assigned as security for the bonds.

42 (3) Foreclosure and sale of the project and any other property mortgaged or  
43 assigned as security for the bonds.

44 (4) Rights to bring and maintain such other actions at law or in equity as may  
45 appear necessary or desirable to collect the amounts payable under, or to  
46 enforce the covenants made in, the security document.

47 It shall be lawful for any bank or trust company incorporated under the laws of this State  
48 which may act as depository of the proceeds of bonds, revenues, or other funds provided under  
49 this Article to furnish indemnifying bonds or to pledge securities as may be required by the  
50 Trust. All expenses incurred in carrying out the provisions of the security document may be

1 treated as a part of the cost of the project in connection with which bonds are issued or as an  
2 expense of administration of the project.

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

6 **"§ 77-129. Remedies.**

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

16 **"§ 77-130. Status of bonds and notes under Uniform Commercial Code.**

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

20 **"§ 77-131. Officers not liable.**

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

24 **"§ 77-132. Conflicts of interest.**

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

33 **"§ 77-133. Cooperation by other State agencies.**

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

36 **"§ 77-134. Net earnings; disposition and use.**

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

48 **"§ 77-135. Funds of Trust.**

49 All funds of the Trust shall be deposited in one or more banks to be designated by the  
50 Board. The Funds shall be paid out only upon warrants signed by the treasurer or assistant  
51 treasurer of the Trust and countersigned by the chair, the acting chair, or the executive director.

1 No warrants shall be drawn or issued disbursing any of the funds of the Trust except for a  
2 purpose authorized by this Article and only when the account or expenditure has been audited  
3 and approved by the Trust or the chairman of the board of directors.

4 **"§ 77-136. Exemption from taxation; payments in lieu of taxes.**

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

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

18 **"§ 77-137. Annual budget and report.**

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

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

34 **SECTION 3.** G.S. 66-58(b) is amended by adding a new subdivision to read:

35 "(b) The provisions of subsection (a) of this section shall not apply to:

36 ...

37 (26) The Yadkin River Trust."

38 **SECTION 4.** This act becomes effective July 1, 2009.