

ADOPTED



CHANGES TITLE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1099

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1099-ARI-29 [v.11]

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Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date 8-5, 2009

Senator Hartsell

1 moves to amend the bill on page 1, line 24, by deleting the word "AND";

2
3 and on page 1, line 26, by rewriting that line to read:

4 "TRANSFER CERTIFICATE; AND (9) CREATE THE YADKIN RIVER TRUST TO
5 ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING
6 HYDROELECTRIC FACILITY.";

7
8 and on page 8, lines 19 and 20,
9 by inserting between those lines:

10
11 "SECTION 10.(a) Chapter 77 of the General Statutes is amended by adding a new
12 Article to read as follows:

13 "Article 9.
14 "Yadkin River Trust.

15 "§ 77-150. Yadkin River Trust.

16 There is established the Yadkin River Trust as a public agency and instrumentality of the
17 State. The purpose of the Trust is to benefit the people of the State as follows:

- 18 (1) To develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly
19 Counties as an instrumentality of intrastate, interstate, and foreign commerce
20 and navigation through the development, sale, and distribution of
21 hydroelectric power.
22 (2) To ensure the equitable distribution of water for public purposes.
23 (3) To maintain recreational facilities associated with the Yadkin River.

24 "§ 77-151. Definitions.

25 The following definitions apply in this Article:

- 26 (1) Board. – The Board of Directors of the Yadkin River Trust.
27 (2) Trust. – The Yadkin River Trust as established by this Article.
28 (3) Yadkin Project. – Project No. 2197 as described in a license issued by the
29 Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter
30 amended and otherwise subject to the regulation of the Federal Energy
31 Regulatory Commission.
32 (4) Yadkin Project License. – The license issued by the Federal Energy
33 Regulatory Commission as of May 1, 1958, which expired on April 30,



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1 2008, the year-to-year annual licenses that have been issued since that time,
2 and any future renewal license for Project No. 2197.

3 **"§ 77-152. Board of Directors.**

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

22 (b) Terms. – The term of office of directors of the Board is four years. A director may
23 be reappointed to any number of successive four-year terms. A director in office continues to
24 serve until the director's successor is duly confirmed and qualified, but the holdover does not
25 affect the expiration date of the succeeding term.

26 (c) Chair; Vice-Chair. – Upon confirmation of the directors by the General Assembly as
27 provided in subsection (a) of this section, the Governor shall designate one of the directors to
28 serve as chair of the Board for the succeeding four years and until the director's successor is
29 duly confirmed and qualified. Upon death or resignation of the director appointed as chair, the
30 Governor shall designate the chair from the remaining directors and appoint a successor in
31 accordance with this section to fill the vacancy on the Board. The Governor shall convene the
32 first meeting of the Board, at which time the members of the Board shall elect from their
33 membership a vice-chair of the Board.

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

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1 appointment is deemed urgent by the Governor, the Governor may appoint a director to serve
2 on an interim basis pending confirmation by the General Assembly.

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

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

12 **"§ 77-153. Authority to acquire Yadkin Project and Yadkin Project License.**

13 The Trust may acquire the Yadkin Project License and may pursue transfer of the license at
14 the Federal Energy Regulatory Commission, file an application for a new license, amend the
15 existing license, and take any other actions necessary to become the licensee for the Yadkin
16 Project on behalf of the State. If the Trust acquires the license, it shall promptly thereafter
17 request permission from the General Assembly to issue revenue bonds or other financing
18 authority to enable acquisition and operation of the Yadkin Project. The State may negotiate,
19 pursue transfer of title for property or permits, and execute agreements necessary for
20 acquisition of the Yadkin Project. If the Yadkin Project license and the Yadkin Project are
21 acquired, the Trust cannot agree to voluntarily surrender, terminate, transfer, or sell the Yadkin
22 River License or the Yadkin Project unless an act of the General Assembly approves the action.

23 **"§ 77-154. Operation of the Trust.**

24 (a) Management. – The Board shall determine the policies of the Trust by majority vote
25 of the members of the Board present and voting, a quorum having been established. Once a
26 policy is determined, the Board must communicate it to the executive director who shall have
27 the sole and exclusive authority to execute the policy of the Trust. No member of the Board has
28 the responsibility or authority to give operational directives to any employee of the Trust other
29 than the executive director.

30 (b) Employees. – The Board shall appoint an executive director, whose salary is fixed
31 by the Board, to serve at its pleasure. The executive director or a person designated by the
32 executive director shall appoint, employ, dismiss, and, within the limits of available funding,
33 fix the compensation of other employees as considered necessary. During any fiscal year, the
34 Trust may not expend funds for merit and performance-based salary increases in excess of the
35 funds that would have been expended had the employees of the Trust received the same
36 across-the-board salary increases granted by the General Assembly to State employees subject
37 to the State Personnel Act. These merit and performance-based salary increases may be
38 awarded on an aggregated average basis according to rules adopted by the Trust. Except as to
39 the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the employees of the
40 Trust are exempt from the State Personnel Act.

41 (c) Consultants. – The Board may employ consulting engineers, architects, attorneys,
42 real estate counselors, appraisers, and other consultants as needed.

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1 (d) Operator. – The Board may enter into a contract with an investor-owned utility,
2 electric membership corporation, or other qualified third party with experience in the operation
3 of electric generating facilities to operate the Yadkin Project on behalf of the Trust, provided
4 that such contract does not abrogate the duties of the Trust as established by G.S. 77-156 and is
5 otherwise consistent with the provisions of this Article.

6 **"§ 77-155. Powers of the Trust.**

7 The Trust has all the powers necessary to execute the provisions of this Article, including
8 the following:

- 9 (1) To adopt, alter, or repeal its bylaws and adopt, amend, or repeal rules to
10 implement the provisions of this Article. The Trust and its activities are not
11 subject to review or approval by the North Carolina Utilities Commission.
12 (2) To sue and be sued, to make contracts, to adopt and use a common seal, and
13 to alter the adopted seal as needed.
14 (3) To contract and enter into agreements with the State, local governments,
15 other authorities of North Carolina, and other states for the interchange of
16 business and to facilitate the business of the Trust.
17 (4) To procure and maintain adequate insurance or otherwise provide for
18 adequate protection to indemnify the Trust and its officers, directors, agents,
19 employees, adjoining property owners, or the general public against loss or
20 liability resulting from any act or omission by or on behalf of the Trust.
21 (5) To establish, purchase, construct, operate, and regulate hydroelectric
22 facilities on the Yadkin River to implement the provisions of this Article.
23 (6) To manufacture, produce, and generate hydroelectric power using the waters
24 of the Yadkin River and to sell the hydroelectric power to utilities within and
25 without the State of North Carolina.
26 (7) To acquire, purchase, establish, build, construct, maintain, equip, and
27 operate any structure or facilities necessary, useful, or customarily used and
28 employed in generation of hydroelectric power.
29 (8) To seek enforcement of environmental laws and contribution to
30 environmental cleanup costs, consistent with its obligations under this
31 Article.

32 **"§ 77-156. Duties of the Trust.**

33 (a) If the Trust acquires the Yadkin Project and Yadkin Project License as provided in
34 this Article, the Trust must:

- 35 (1) Conduct environmental site assessments of all properties located in the
36 Yadkin River Basin currently or formerly owned and operated by Alcoa
37 Power Generating, Inc., or Alcoa, Inc., or their subsidiaries, to the extent
38 necessary to evaluate risks to public health or the environment posed by
39 contamination at or emanating from such properties. The Trust shall pursue
40 remediation of such properties to levels sufficient to allow the unrestricted
41 use of such properties, including, to the extent necessary, by taking legal
42 action against the parties responsible for such contamination..

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- 1 (2) Conduct environmental site assessments of hazardous waste sites that were
2 associated with the disposal of waste materials from the Badin Works site,
3 excluding properties owned or under the control of Alcoa Power Generating,
4 Inc., Alcoa, Inc., or their subsidiaries. The Trust shall pursue remediation of
5 such properties described to levels sufficient to support the unrestricted use
6 of such properties, including, to the extent necessary, by taking legal action
7 against the parties responsible for such contamination.
- 8 (3) Institute operational changes to the Yadkin Project that will retain more
9 water in Badin, Falls, High Rock, and Tuckertown lakes and provide a
10 consistent flow of water to downstream water users.
- 11 (4) Apportion up to twenty-five percent (25%) of the net proceeds from the
12 Yadkin Project's electrical output for use by a regional "Power for Jobs"
13 fund to be established by the Department of Commerce. The Power for Jobs
14 fund may make grants to businesses and not-for-profit corporations to create
15 or retain jobs in the Yadkin River Basin.
- 16 (5) After performance of subdivisions (1) through (4) of this subsection,
17 compliance with subsection (b) of this section, and retention of any
18 necessary operating reserves, the Trust shall utilize up to twenty-five percent
19 (25%) of the remaining annual net revenues from the Yadkin Project to
20 make grants to the Community College System Office for allocation by the
21 State Board of Community Colleges for instructional equipment at the
22 community colleges as determined by the State Board.
- 23 (6) After performance of subdivisions (1) through (5) of this subsection,
24 compliance with subsection (b) of this section, and retention of any
25 necessary operating reserves, the Trust shall utilize the annual net revenues
26 from the Yadkin Project exclusively to fund projects to protect and improve
27 the health of the Yadkin River and the water quality in the Yadkin River
28 Basin.

29 (b) If the Trust acquires the Yadkin Project and Yadkin Project License as provided in
30 this Article, the Trust must, to the maximum extent practicable, comply with all terms and
31 conditions of the Relicensing Settlement Agreement filed with the Federal Energy Regulatory
32 Commission on May 7, 2007 for the Yadkin Project, and shall assume, to the maximum extent
33 practicable, all rights and obligations of the Licensee as provided in the Agreement.

34 "§ 77-157. Reserved for future codification purposes.

35 "§ 77-158. Use of revenues.

36 Revenues from the Yadkin River Project must be used to pay the following obligations:

37 (1) To operate the Yadkin Project.

38 (2) To fulfill the duties under G.S. 77-156.

39 "§ 77-159. Reserved for future codification purposes.

40 "§ 77-160. Report; audit.

41 (a) Report. – The Trust must submit a report regarding its operations and transactions
42 for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations,
43 the Joint Legislative Utility Review Committee, and the House and Senate Committees on

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1 Appropriations on or before July 1 of each year. The annual report must include the following
2 information:

- 3 (1) The amount of power and energy produced by the Trust.
- 4 (2) The Trust's financial statements for the preceding fiscal year, prepared in
5 accordance with generally accepted accounting principles.
- 6 (3) The price of power and energy sold by the Trust.
- 7 (4) The amount of water distributed to each entity or water user.
- 8 (5) The status of environmental testing, assessment, and remediation of
9 contamination at the Badin Works and other sites located in Stanly County.

10 (b) Audit. – The operations of the Trust are subject to the oversight of the State Auditor
11 under Article 5A of Chapter 147 of the General Statutes.

12 **"§ 77-161. Conflicts of interest.**

13 A director, officer, or employee of the Trust who has a conflict of interest in a contract with
14 the Trust must disclose this interest to the Board and the Board must note the conflict of
15 interest in its minutes. The director, officer, or employee who has a conflict of interest may not
16 participate on behalf of the Trust in the authorization of that contract. Failure to take the actions
17 required by this section does not affect the validity of any bonds or notes issued by the Trust.

18 A director, officer, or employee of the Trust has a conflict of interest if any one or more of
19 the following applies:

- 20 (1) The director, officer, or employee has a direct or indirect interest in a
21 contract with the Trust.
- 22 (2) The director, officer, or employee is an officer or employee of a firm or
23 corporation, not including a unit of local government, that has a direct or
24 indirect interest in a contract with the Trust.
- 25 (3) The director, officer, or employee has an ownership interest in a firm or
26 corporation that has a direct or indirect interest in a contract with the Trust."

27 **SECTION 10.(b)** Notwithstanding G.S. 77-152, as enacted by Section 1 of this act,
28 in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River
29 Trust, the terms of the initial appointments of the directors made by the Governor shall be made
30 as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three
31 years; and (iii) three shall be for a period of four years.

32 **SECTION 10.(c)** G.S. 66-58(b) is amended by adding a new subdivision to read:

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

- 34 ...
- 35 (27) The Yadkin River Trust, established in G.S. 77-150."

36 **SECTION 10.(d)** G.S. 126-5(c1) reads as rewritten:

37 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
38 Chapter shall not apply to:

- 39 ...
- 40 (30) Employees of the Yadkin River Trust."

41 **SECTION 10.(e)** G.S. 150B-1(c) reads as rewritten:

42 "(c) Full Exemptions. – This Chapter applies to every agency except:

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- 1 (1) The North Carolina National Guard in exercising its court-martial
- 2 jurisdiction.
- 3 (2) The Department of Health and Human Services in exercising its authority
- 4 over the Camp Butner reservation granted in Article 6 of Chapter 122C of
- 5 the General Statutes.
- 6 (3) The Utilities Commission.
- 7 (4) The Industrial Commission.
- 8 (5) The Employment Security Commission.
- 9 (6) The State Board of Elections in administering the HAVA Administrative
- 10 Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- 11 (7) The North Carolina State Lottery.
- 12 (8) The Yadkin River Trust, established in G.S. 77-150."

13 **SECTION 10.(f)** The General Assembly strongly encourages the continuation of
 14 discussions between the State of North Carolina, Alcoa Power Generating, Inc., and other
 15 interested parties to explore potential settlement of the dispute concerning the Federal Energy
 16 Regulatory Commission license for and operation of the Yadkin Project. The Department of
 17 Justice shall report to the Joint Legislative Commission on Governmental Operations and the
 18 Joint Legislative Utility Review Committee on or before July 1, 2010 on the status of the
 19 matter.

20 **SECTION 10.(g)** The Secretary of Commerce shall present a detailed business
 21 plan for the operation of the Yadkin River Trust to the Joint Legislative Commission on
 22 Governmental Operations and the Joint Legislative Utility Review Committee on or before
 23 March 1, 2010.

24 **SECTION 10.(h)** With the exception of GS 77-154(d), as enacted by Section
 25 10.(a) of this act, the provisions of this act shall not apply to any investor-owned utilities
 26 regulated by the North Carolina Utilities Commission

27 **SECTION 10.(i)** If the Federal Energy Regulatory Commission issues a new
 28 multi-year license to Alcoa Power Generating Inc. for the Yadkin Project No. 2197, the
 29 provisions of this Act shall expire upon issuance of that license.";

30 and by renumbering the remaining section accordingly.
 31

SIGNED *Walter S. Harrell*
 Amendment Sponsor

SIGNED _____
 Committee Chair if Senate Committee Amendment

ADOPTED 43-4 FAILED _____ TABLED _____

8-5-09
Janet Pruitt

ADOPTED