

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 305*

Short Title: NCEMPA Asset Sale. (Public)

Sponsors: Senators Newton, Pate, Bryant (Primary Sponsors); Apodaca, Barefoot, Berger, Bingham, Brock, Brown, Clark, Cook, Curtis, Daniel, D. Davis, J. Davis, Ford, Foushee, Gunn, Harrington, Hartsell, Hise, J. Jackson, B. Jackson, Krawiec, Lee, Lowe, McInnis, McKissick, Rabin, Rabon, Robinson, Rucho, Sanderson, Smith, Smith-Ingram, Soucek, Stein, Tarte, Tillman, Tucker, Van Duyn, Waddell, Wade, Wells, and Woodard.

Referred to: Commerce.

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE COST RECOVERY FOR ACQUISITION OF JOINT MUNICIPAL POWER AGENCY OWNERSHIP INTEREST IN GENERATING FACILITIES, TO AUTHORIZE MUNICIPALITIES THAT ARE MEMBERS OF JOINT MUNICIPAL POWER AGENCIES TO ENTER INTO SUPPORT CONTRACTS, AND TO ISSUE BONDS TO PAY THE COSTS OF PROJECTS THAT ARE SOLD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-133.14. Cost recovery for acquisition of joint municipal power agency ownership interest in generating facilities.

(a) The Commission shall, upon the petition of an electric public utility and after hearing, approve an annual rider to the electric public utility's rates to recover the North Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and maintain the proportional interest in electric generating facilities purchased from a joint agency established under Chapter 159B of the General Statutes. For the purposes of this section, "acquisition costs" means the amount paid by an electric public utility on or before December 31, 2016, to acquire the generating facilities, including the amount paid above the net book value of the generating facilities. The Commission shall adopt rules to implement the provisions of this section.

(b) In determining the amount of the rider, the Commission shall:

- (1) Allow an electric public utility to recover acquisition costs, as reasonable and prudent costs. For the benefit of the consumer, the acquisition costs shall be levelized over the useful life of the assets at the time of acquisition.
- (2) Include financing costs equal to the weighted average cost of capital as authorized by the Commission in the electric public utility's most recent general rate case.
- (3) Include an estimate of operating costs based on prior year's experience and the costs projected for the next 12-month period for any proportional capital investments in the acquired electric generating facilities.



1 (4) Include adjustments to reflect the North Carolina retail portion of financing
2 and operating costs related to the electric public utility's other used and
3 useful generating facilities owned at the time of the acquisition to properly
4 account for updated jurisdictional allocation factors.

5 (c) The Commission shall require that an electric public utility file the following
6 proposed annual adjustments to the rider:

7 (1) Any under-recovery or over-recovery resulting from the operation of the
8 rider.

9 (2) Any changes necessary to recover costs as forecast for the next 12-month
10 period.

11 (3) Any changes to cost of capital determined in any general rate proceeding
12 occurring after the initial establishment of the rider, where the cost of capital
13 applies to both the remaining acquisition costs and additional capital
14 investment in the electric generating facilities.

15 (d) Any rider established under this section will expire after the end of the useful life of
16 the acquired electric generating facilities at the time of acquisition, with any remaining
17 unrecovered costs deferred until the electric public utility's next general rate proceeding under
18 G.S. 62-133."

19 **SECTION 2.** G.S. 159B-2 reads as rewritten:

20 **"§ 159B-2. Legislative findings and purposes.**

21 The General Assembly hereby finds and determines that:

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

24 The public utilities operating in the State have sustained greatly increased capital and
25 operating costs;

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

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

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

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

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

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

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

7 Municipal electric systems that have jointly planned, developed, acquired, owned, and
8 financed electric generation and transmission facilities through joint agencies in furtherance of
9 the purposes of this Chapter also may benefit from obtaining their power and energy
10 requirements from replacement resources, the disposition of facilities owned by joint agencies,
11 and the issuance by joint agencies of bonds to refinance the outstanding debt incurred with
12 respect to facilities to the extent outstanding debt cannot be completely defeased in connection
13 with the disposition of the facilities, and it is desirable for the State of North Carolina to
14 facilitate the foregoing. Refinancing debt, and financing any collateral posting requirements
15 incident to replacement power and energy resources that may be acquired, by the issuance of
16 revenue bonds secured by payments by municipal electric systems, is for a public use and for a
17 public and municipal purpose and is an alternative means, together with the disposition of the
18 jointly owned facilities and acquisition of replacement sources of power and energy, of
19 achieving economies, adequacy and reliability of electric power and energy supply, and in
20 meeting the future needs of the State and its inhabitants.

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

47 **SECTION 3.** G.S. 159B-11 reads as rewritten:

48 "**§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.**

49 (a) Each joint agency shall have all of the rights and powers necessary or convenient to
50 carry out and effectuate the purposes and provisions of this Chapter, including, but without
51 limiting the generality of the foregoing, the rights and powers:

- 1 (1) To adopt bylaws for the regulation of the affairs and the conduct of its
2 business, and to prescribe rules, regulations and policies in connection with
3 the performance of its functions and ~~duties;~~duties.
- 4 (2) To adopt an official seal and alter the same at ~~pleasure;~~pleasure.
- 5 (3) To acquire and maintain an administrative office building or office at such
6 place or places as it may determine, which building or office may be used or
7 owned alone or together with any other joint agency or agencies, joint
8 municipal assistance agency, municipalities, corporations, associations or
9 persons under such terms and provisions for sharing costs and otherwise as
10 may be ~~determined;~~determined.
- 11 (4) To sue and be sued in its own name, and to plead and be
12 ~~impleaded;~~impleaded.
- 13 (5) To receive, administer and comply with the conditions and requirements
14 respecting any gift, grant or donation of any property or ~~money;~~money.
- 15 (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the
16 acquisition of, any property, real or personal, improved or unimproved,
17 including an interest in land less than the fee ~~thereof;~~thereof.
- 18 (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options
19 for any such purposes with respect to, any real or personal property or
20 interest ~~therein;~~therein.
- 21 (8) To pledge, assign, mortgage or otherwise grant a security interest in any real
22 or personal property or interest therein, including the right and power to
23 pledge, assign or otherwise grant a security interest in any money, rents,
24 charges or other revenues and any proceeds derived by the joint agency from
25 the sales of property, insurance or condemnation ~~awards;~~awards.
- 26 (9) To issue bonds of the joint agency for the purpose of providing funds for any
27 of its corporate ~~purposes;~~purposes.
- 28 (10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge,
29 extend, better, own, operate and maintain one or more projects, either
30 individually or jointly with one or more municipalities in this State or any
31 state contiguous to this State owning electric distribution facilities or with
32 any political subdivisions, agencies or instrumentalities of any state
33 contiguous to this State or with other joint agencies created pursuant to this
34 Chapter, and to pay all or any part of the costs thereof from the proceeds of
35 bonds of the joint agency or from any other available funds of the joint
36 agency; no provisions of law with respect to the acquisition, construction, or
37 operation of property by other public bodies shall be applicable to any
38 project as defined in this Chapter and as authorized by this subdivision
39 unless the General Assembly shall specifically so ~~state;~~state.
- 40 (11) To authorize the construction, operation or maintenance of any project or
41 projects by any person, firm, association, or corporation, public or
42 ~~private;~~private.
- 43 (12) To acquire by private negotiated purchase or lease or otherwise an existing
44 project, a project under construction, or other property, either individually or
45 jointly, with one or more municipalities or joint agencies in this State or any
46 state contiguous to this State owning electric distribution facilities or with
47 any political subdivisions, agencies or instrumentalities of any state
48 contiguous to this State or with other joint agencies created pursuant to this
49 Chapter; to acquire by private negotiated purchase or lease or otherwise any
50 facilities for the development, production, manufacture, procurement,
51 handling, storage, fabrication, enrichment, processing or reprocessing of fuel

1 of any kind or any facility or rights with respect to the supply of water, and
2 to enter into agreements by private negotiation or otherwise, for a period not
3 exceeding fifty (50) years, for the development, production, manufacture,
4 procurement, handling, storage, fabrication, enrichment, processing or
5 reprocessing of fuel of any kind or any facility or rights with respect to the
6 supply of water; no provisions of law with respect to the acquisition,
7 construction or operation of property by other public bodies shall be
8 applicable to any agency created pursuant to this Chapter unless the
9 legislature shall specifically so ~~state~~;state.

10 (13) To dispose of by private negotiated sale or lease, or otherwise, an existing
11 project or a project under construction, or to dispose of by private negotiated
12 sale or lease, or otherwise any facilities for the development, production,
13 manufacture, procurement, handling, storage, fabrication, enrichment,
14 processing or reprocessing of fuel of any kind or any facility or rights with
15 respect to the supply of water; no provisions of law with respect to the
16 disposition of property by other public bodies shall be applicable to an
17 agency created pursuant to this Chapter unless the legislature shall
18 specifically so ~~state~~;state.

19 (14) To fix, charge and collect rents, rates, fees and charges for electric power or
20 energy and other services, facilities and commodities sold, furnished or
21 supplied through any project or activity permitted in this ~~Chapter~~;Chapter.

22 (14a) To fix, charge, and collect payments pursuant to support contracts authorized
23 by G.S. 159B-12(b).

24 (15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale
25 only, electric power or energy, and to enter into contracts for any or all such
26 ~~purposes~~;purposes.

27 (16) To negotiate and enter into contracts for the purchase, sale for resale only,
28 exchange, interchange, wheeling, pooling, transmission or use of electric
29 power and energy with any person, firm, association, or corporation, public
30 or ~~private~~;private.

31 (17) To make and execute contracts and other instruments necessary or
32 convenient in the exercise of the powers and functions of the joint agency
33 under this Chapter, including contracts with persons, firms, associations, or
34 corporations, public or ~~private~~;private.

35 (18) To apply to the appropriate agencies of the State, the United States or any
36 state thereof, and to any other proper agency, for such permits, licenses,
37 certificates or approvals as may be necessary, and to construct, maintain and
38 operate projects and undertake other activities permitted in this Chapter in
39 accordance with such licenses, permits, certificates or approvals, and to
40 obtain, hold and use such licenses, permits, certificates and approvals in the
41 same manner as any other person or operating unit of any other
42 ~~person~~;person.

43 (19) To employ engineers, architects, attorneys, real estate counselors, appraisers,
44 financial advisors and such other consultants and employees as may be
45 required in the judgment of the joint agency and to fix and pay their
46 compensation from funds available to the joint agency therefor and to select
47 and retain subject to approval of the Local Government Commission the
48 financial consultants, underwriters and bond attorneys to be associated with
49 the issuance of any bonds and to pay for services rendered by underwriters,
50 financial consultants or bond attorneys out of the proceeds of any such issue
51 with regard to which the services were ~~performed~~;performed.

- 1 (19a) To purchase power and energy, and services and facilities relating to the
2 utilization of power and energy, from any source on behalf of its members
3 and other customers and to furnish, sell, lease, exchange, transfer, or
4 otherwise dispose of, or to grant options for any such purposes with respect
5 to the same, to its members and other customers in such amounts, with such
6 characteristics, for such periods of time and under such terms and conditions
7 as the governing board of the joint agency shall ~~determine;~~determine.
- 8 (19b) To provide aid and assistance to municipalities, and to act for or on behalf of
9 any municipality, in any activity related to the development and
10 implementation of integrated resource planning, including, but not limited
11 to, the evaluation of resources, generating facilities, alternative energy
12 resources, conservation and load management programs, transmission and
13 distribution facilities, and purchased power options, and related to the
14 development, construction and operation of supply-side and demand-side
15 resources, and to do such other acts and things as provided in Article 3 of
16 this Chapter as if the joint agency were a joint municipal assistance agency,
17 and to carry out the powers granted in this Chapter in relation thereto; to
18 provide aid and assistance to any joint municipal assistance agency in the
19 exercise of its respective powers and ~~functions;~~and functions.
- 20 (20) To do all acts and things necessary, convenient or desirable to carry out the
21 purposes, and to exercise the powers granted to the joint agency in this
22 Chapter.

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

- 33 (1) The economies and efficiencies to be achieved in constructing on a large
34 scale facilities for the generation of electric power and energy;
- 35 (2) Needs of the joint agency for reserve and peaking capacity and to meet
36 obligations under pooling and reserve-sharing agreements reasonably related
37 to its needs for power and energy to which the joint agency is or may
38 become a party;
- 39 (3) The estimated useful life of such project;
- 40 (4) The estimated time necessary for the planning, development, acquisition, or
41 construction of such project and the length of time required in advance to
42 obtain, acquire or construct additional power supply for the members of the
43 joint agency;
- 44 (5) The reliability and availability of existing alternative power supply sources
45 and the cost of such existing alternative power supply sources.

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

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

3 **SECTION 4.** G.S. 159B-12 reads as rewritten:

4 **"§ 159B-12. Sale of capacity and output by a joint agency; support contracts; other**
5 **contracts with a joint agency.**

6 (a) Any municipality which is a member of the joint agency may contract to buy from
7 the joint agency power and energy for its present or future requirements, including the capacity
8 and output of one or more specified projects. As the creation of a joint agency is an alternative
9 method whereby a municipality may obtain the benefits and assume the responsibilities of
10 ownership in a project, any such contract may provide that the municipality so contracting shall
11 be obligated to make the payments required by the contract whether or not a project is
12 completed, operable or operating and notwithstanding the suspension, interruption,
13 interference, reduction or curtailment of the output of a project or the power and energy
14 contracted for, and that such payments under the contract shall not be subject to any reduction,
15 whether by offset or otherwise, and shall not be conditioned upon the performance or
16 nonperformance of the joint agency or any other member of the joint agency under the contract
17 or any other instrument. Any contract with respect to the sale or purchase of capacity or output
18 of a project entered into between a joint agency and its member municipalities may also
19 provide that if one or more of such municipalities shall default in the payment of its or their
20 obligations with respect to the purchase of said capacity or output, then in that event the
21 remaining member municipalities which are purchasing capacity and output under the contract
22 shall be required to accept and pay for and shall be entitled proportionately to and may use or
23 otherwise dispose of the capacity or output which was to be purchased by the defaulting
24 municipality. Notwithstanding the provisions of any other law to the contrary, any such
25 contract with respect to the sale or purchase of capacity, output, power, or energy from a
26 project may extend for a period not exceeding 50 years from the date a project is estimated to
27 be placed in normal continuous operation.

28 (b) If any municipality which is a member of the joint agency has contracted to buy
29 from the joint agency the capacity and output of one or more specified projects as contemplated
30 by and containing characteristics authorized by subsection (a) of this section, and if the joint
31 agency has acquired one or more projects and financed the acquisition of any project by issuing
32 bonds pursuant to the provisions of this Chapter, and if the joint agency sells or otherwise
33 disposes of any project, and if the proceeds of the sale or other disposition of any project,
34 together with other moneys available to the joint agency for the purpose of paying the bonds,
35 are not sufficient to pay or provide for the payment of the principal of, premium, if any, and
36 interest on all of such bonds issued to finance the acquisition of the existing project or projects,
37 the municipality may enter into a support contract with the joint agency to pay a proportionate
38 share of the principal of, premium, if any, and interest on bonds issued by the joint agency to (i)
39 refinance the bonds issued to finance the acquisition of any existing project being sold or
40 otherwise disposed of that are not defeased from other sources, (ii) finance any collateral
41 posting requirements of replacement power supply arrangements entered into by the joint
42 agency, and (iii) finance any required reserves and other costs associated with the support
43 contracts and the issuance of the bonds authorized by G.S. 159B-14.

44 As a support contract authorized by this subsection is a replacement for and in lieu of the
45 payment obligations authorized by subsection (a) of this section related to an existing project or
46 projects, any support contract may provide that the contracting municipality is obligated to
47 make the payments required by the support contract unconditionally and without offset,
48 counterclaim, or otherwise, and notwithstanding the performance or nonperformance of the
49 joint agency under the support contract, or of any other municipality entering into a similar
50 support contract with the joint agency, or the delivery of or failure to deliver power or energy
51 or the performance or nonperformance by any party under any related power supply contract.

1 Any support contract entered into between a joint agency and its member municipalities may
2 also provide that if any municipality defaults in the payment of its obligations under the support
3 contract, the remaining member municipalities subject to the contract are required to pay a
4 proportionate share of the defaulted payments.

5 Notwithstanding the provisions of any other law to the contrary, the obligations of the
6 municipality under a support contract may extend for a period of 30 years, except for accrued
7 obligations as of the expiration of the period for which the contract may be continued until the
8 accrued obligations are fully satisfied, and, with respect to administrative costs only, for a
9 reasonable period of time thereafter.

10 Obligations under a support contract shall not be taken into account in computing any debt
11 or other limitation that may be imposed by law. Being on account of the refinancing of
12 obligations incurred in connection with the acquisition of a project or projects, the obligations
13 of the municipality under any support contract shall constitute an operating expense of its
14 municipal electric system for all purposes of G.S. 159-47 and other purposes, save only as may
15 have been duly contracted with bondholders of the municipality.

16 (c) Any municipality may contract with a joint agency, or may contract indirectly with
17 a joint agency through a joint municipal assistance agency, to implement the provisions of
18 G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary,
19 including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint
20 agency and a municipality or a joint municipal assistance agency (or between a municipality
21 and a joint municipal assistance agency) to implement the provisions of G.S. 159B-11(19b)
22 may extend for a period not exceeding 30 years; provided, that any such contract in respect of a
23 capital project to be used by or for the benefit of a municipality shall be subject to the prior
24 approval of the Local Government Commission of North Carolina. In reviewing any such
25 contract for approval, said Local Government Commission shall consider the municipality's
26 debt management procedures and policies, whether the municipality is in default with respect to
27 its debt service obligations and such other matters as said Local Government Commission may
28 believe to have a bearing on whether the contract should be approved.

29 (d) Notwithstanding the provisions of any law to the contrary, the execution and
30 effectiveness of any contracts authorized by this section shall not be subject to any
31 authorizations or approvals by the State or any agency, commission or instrumentality or
32 political subdivision thereof except as in this Chapter specifically required and provided.

33 Payments by a municipality under any contract authorized by this section shall be made
34 solely from the revenues derived from the ownership and operation of the electric system of
35 said municipality and any obligation under such contract shall not constitute a legal or equitable
36 pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its
37 income, receipts, or revenues, except the revenues of its electric system, and neither the faith
38 and credit nor the taxing power of the municipality are, or may be, pledged for the payment of
39 any obligation under any such contract. A municipality or joint agency, pursuant to an
40 agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and
41 charges for electric power and energy and other services, activities permitted in this Chapter,
42 facilities and commodities sold, furnished or supplied through the electric system of the
43 municipality sufficient to provide revenues adequate to meet its obligations under any such
44 contract and to pay any and all other amounts payable from or constituting a charge and lien
45 upon such revenues, including amounts sufficient to pay the principal of and interest on general
46 obligation bonds heretofore or hereafter issued by the municipality for purposes related to its
47 electric system system and payments pursuant to support contracts authorized by subsection (b)
48 of this section. The willful or negligent failure by any municipality to comply with the
49 obligations applicable to it shall constitute a failure or refusal to comply with the provisions of
50 this Chapter for purposes of G.S. 159-181(c), and the financial powers of the governing board
51 of the municipality that may be vested in the Local Government Commission pursuant to

1 G.S. 159-181(c) shall include those powers incident to carrying out the requirements and
2 obligations specified in this section.

3 Payments by any joint municipal assistance agency to any joint agency under any contract
4 or contracts authorized by this section, shall be made solely from the sources specified in such
5 contract or contracts and no other, and any obligation under such contract shall not constitute a
6 legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint
7 municipal assistance agency or upon any of its income, receipts, or revenues, or upon any
8 property of any municipality with which the joint agency or joint municipal assistance agency
9 contracts or upon any of such municipality's income, receipts, or revenues in each case except
10 such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge
11 and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide
12 revenues adequate to meet its obligations under such contract.

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

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

23 **SECTION 5.** G.S. 159B-14 reads as rewritten:

24 "**§ 159B-14. Bonds of a joint agency.**

25 (a) A joint agency may issue bonds for the purpose of paying the cost of a project and
26 secure both the principal of and interest on the bonds by a pledge of part or all of the revenues
27 derived or to be derived from all or any of its projects, and any additions and betterments
28 thereto or extensions thereof, or from the sale of power and energy and services and facilities
29 related to the utilization of power and energy, or from other activities or facilities permitted in
30 this Chapter, or from contributions or advances from its members. A joint agency may issue
31 bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by
32 a pledge of revenues, solely by a security interest in real or personal property, or by both a
33 pledge of revenues and a security interest in real or personal property. Bonds of a joint agency
34 shall be authorized by a resolution adopted by its governing board and spread upon its minutes.

35 (b) A joint agency may issue bonds for the purpose of refinancing bonds issued for the
36 purpose of paying the cost of a project, including, but not limited to, paying or providing for the
37 payment of the principal of, premium, if any, and interest on bonds theretofore issued by a joint
38 agency for the purpose of paying the cost of a project which is being sold or otherwise disposed
39 of by the joint agency in whole or in part, and for the purpose of financing any collateral
40 posting requirements of replacement power supply arrangements authorized in G.S. 159B-12,
41 and secure the principal of, premium, if any, and interest on the bonds by a pledge of part or all
42 of the revenues derived or to be derived from all or any of its projects, and any additions and
43 betterments thereto or extensions thereof, or from the sale of power and energy and services
44 and facilities related to the utilization of power and energy, or from other activities or facilities
45 permitted in this Chapter, or by a pledge of payments derived from support contracts authorized
46 by G.S. 159B-12, or from contributions or advances from its members. Bonds of a joint agency
47 shall be authorized by a resolution adopted by its governing board and spread upon its
48 minutes."

49 **SECTION 6.** G.S. 159B-16(1) reads as rewritten:

50 "(1) The pledge of all or any part of the revenues derived or to be derived from
51 the project or projects to be financed by the bonds, or from the sale or other

1 disposition of power and energy and services and facilities related to the
2 utilization of power and energy, or from other services or activities permitted
3 in this Chapter, or from payments derived from support contracts authorized
4 by G.S. 159B-12, or from contributions and advances from members of a
5 joint agency, or from the electric system or other facilities of a municipality
6 or a joint agency."

7 **SECTION 7.** G.S. 159B-16.1 reads as rewritten:

8 "**§ 159B-16.1. Revenues – NCEMPA members.**

9 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
10 charges for electric power and energy and other services, facilities and commodities sold,
11 furnished or supplied through the facilities of its electric system or its interest in any joint
12 project. Before it revises its rates, fees or charges as authorized under this subsection, a
13 municipality shall hold a public hearing on the matter. A notice of the hearing shall be
14 published at least once a week for two successive weeks in a newspaper having general
15 circulation in the municipality. The notice shall state that the public hearing will be held in
16 connection with the municipality's action to revise its rates, fees, or charges authorized in this
17 section and state the amount of the proposed revision. At the hearing, any retail electric
18 customer of the municipality may appear and be heard on the proposed revision to the rates,
19 fees, or charges. The provisions of G.S. 160A-81 shall apply to any public hearing held under
20 this subsection. The provisions of this subsection relating to a public hearing shall not apply to
21 action required to be taken for a municipality by the Local Government Commission, in
22 accordance with G.S. 159-181(c), or to action required to be taken by a municipality to revise
23 its rates, fees or charges authorized in this subsection if the revision is required to be
24 implemented immediately as a result of a catastrophic event or to avoid impairing the ability of
25 the municipality to comply with applicable law or its contractual obligations relating to its
26 outstanding bonds or other indebtedness. For so long as any bonds of a municipality ~~are~~
27 outstanding or amounts payable or to become payable by a municipality to a joint agency are
28 and unpaid, or the payment of which is not fully provided for, the rents, rates, fees and charges
29 shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses
30 in connection with the proper operation and maintenance of its electric system, and its interest
31 in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when
32 due the principal of, premium, if any, and interest on all bonds and other evidences of
33 indebtedness payable from said revenues, to create and maintain reserves as may be required by
34 any resolution or trust agreement authorizing and securing bonds, to pay when due the principal
35 of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued
36 to finance additions, improvements and betterments to its electric system, and to pay any and
37 all amounts which the municipality may be obligated to pay from said revenues by law or
38 ~~contract.~~ contract, including, but not limited to, a support contract authorized by G.S. 159B-12.

39 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
40 charges for electric power and energy and other services, facilities and commodities sold,
41 furnished or supplied through the facilities of its projects or otherwise as authorized by this
42 Chapter. A joint agency may only take action to change the rates, fees, or charges authorized in
43 this subsection in a public meeting. Notice of the public meeting shall be given to each
44 municipality that is a member of the joint agency. A notice of the meeting shall be published at
45 least once a week for two successive weeks in a newspaper having general circulation in each
46 municipality that is a member of the joint agency. The notice shall state that the public meeting
47 will be held in connection with the joint agency's action to revise its rates, fees, or charges
48 authorized in this subsection and state the amount of the proposed revision. The provisions of
49 this subsection relating to publication of a notice shall not apply to action required to be taken
50 by a joint agency to revise its rates, fees or charges authorized in this subsection if the revision
51 is required to be implemented immediately as a result of a catastrophic event or to avoid

1 impairing the ability of the joint agency to comply with applicable law or its contractual
2 obligations relating to its outstanding bonds or other indebtedness. For so long as any bonds of
3 a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as
4 to provide revenues sufficient to pay all costs of and charges and expenses in connection with
5 the proper operation and maintenance of its projects, and all necessary repairs, replacements or
6 renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds
7 and other evidences of indebtedness payable from said revenues, to create and maintain
8 reserves as may be required by any resolution or trust agreement authorizing and securing
9 bonds, and to pay any and all amounts which the joint agency may be obligated to pay from
10 said revenues by law or contract.

11 (c) Any pledge of revenues, ~~securities~~ securities, payments derived by support contracts
12 authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or joint
13 municipal assistance agency pursuant to this Chapter shall be valid and binding from the date
14 the pledge is made. The revenues, securities, support contract payments, and other moneys so
15 pledged and then held or thereafter received by the municipality, joint agency or joint
16 municipal assistance agency or any fiduciary or other depository shall immediately be subject
17 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
18 pledge shall be valid and binding as against all parties having claims of any kind in tort,
19 contract, or otherwise against the municipality, joint agency or joint municipal assistance
20 agency without regard to whether such parties have notice thereof. The resolution or trust
21 agreement or any financing statement, continuation statement or other instrument by which a
22 pledge of revenues, securities or other moneys is created need not be filed or recorded in any
23 manner.

24 (d) This section applies only to all rates, fees, or charges for electric service provided by
25 the North Carolina Eastern Municipal Power Agency (NCEMPA) or a member city or town of
26 the NCEMPA on or after October 1, 2012. The following cities and towns are members of the
27 North Carolina Eastern Municipal Power Agency: Apex, Ayden, Belhaven, Benson, Clayton,
28 Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood,
29 Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red
30 Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro,
31 Wake Forest, Washington, and Wilson."

32 **SECTION 8.** G.S. 159B-17 reads as rewritten:

33 **"§ 159B-17. Revenues – other municipalities.**

34 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
35 charges for electric power and energy and other services, facilities and commodities sold,
36 furnished or supplied through the facilities of its electric system or its interest in any joint
37 project. For so long as any bonds of a municipality or amounts payable or to become payable to
38 a joint agency are outstanding and are unpaid, or the payments of which is not fully provided
39 for, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay
40 all costs of and charges and expenses in connection with the proper operation and maintenance
41 of its electric system, and its interest in any joint project, and all necessary repairs,
42 replacements or renewals thereof, to pay when due the principal of, premium, if any, and
43 interest on all bonds and other evidences of indebtedness payable from said revenues, to create
44 and maintain reserves as may be required by any resolution or trust agreement authorizing and
45 securing bonds, to pay when due the principal of, premium, if any, and interest on all general
46 obligation bonds heretofore or hereafter issued to finance additions, improvements and
47 betterments to its electric system, and to pay any and all amounts which the municipality may
48 be obligated to pay from said revenues by law or ~~contract~~ contract, including, but not limited
49 to, a support contract authorized by G.S. 159B-12.

50 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
51 charges for electric power and energy and other services, facilities and commodities sold,

1 furnished or supplied through the facilities of its projects or otherwise as authorized by this
2 Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates,
3 fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and
4 charges and expenses in connection with the proper operation and maintenance of its projects,
5 and all necessary repairs, replacements or renewals thereof, to pay when due the principal of,
6 premium, if any, and interest on all bonds and other evidences of indebtedness payable from
7 said revenues, to create and maintain reserves as may be required by any resolution or trust
8 agreement authorizing and securing bonds, and to pay any and all amounts which the joint
9 agency may be obligated to pay from said revenues by law or contract.

10 (c) Any pledge of revenues, ~~securities~~ securities, payments derived from support
11 contracts authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or
12 joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the
13 date the pledge is made. The revenues, securities, support contract payments, and other moneys
14 so pledged and then held or thereafter received by the municipality, joint agency or joint
15 municipal assistance agency or any fiduciary or other depository shall immediately be subject
16 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
17 pledge shall be valid and binding as against all parties having claims of any kind in tort,
18 contract, or otherwise against the municipality, joint agency or joint municipal assistance
19 agency without regard to whether such parties have notice thereof. The resolution or trust
20 agreement or any financing statement, continuation statement or other instrument by which a
21 pledge of revenues, securities support contract payment, or other moneys is created need not be
22 filed or recorded in any manner."

23 **SECTION 9.** This act is effective when it becomes law.