

### Article 3.

#### Joint Municipal Assistance Agencies.

##### **§ 159B-42. Joint municipal assistance agencies.**

The purpose of this Article is to authorize joint agencies or municipalities to form one or more joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, to do such other acts and things as hereinafter provided and to carry out the powers and responsibilities hereinafter granted in this Chapter. It shall also be the purpose of a joint municipal assistance agency to provide aid and assistance to any joint agency in the exercise of its respective powers and functions. The term "provide aid and assistance" shall be liberally construed. (1983, c. 609, s. 7; 1995, c. 412, s. 21.)

##### **§ 159B-43. Joint municipal assistance agencies authorized.**

(a) Any two or more joint agencies, or any two or more municipalities, may organize a joint municipal assistance agency, which shall be a public body and body corporate and politic. Any joint agency or municipality is hereby authorized to become a member of any such joint municipal assistance agency upon a determination, by resolution or ordinance of its governing board, that economies, efficiencies and other benefits might be achieved from participation in such an agency.

The resolution or ordinance determining it desirable for a joint agency or municipality to become a member of a joint municipal assistance agency (which need not prescribe in detail the basis for the determination) shall set forth the names of the joint agencies or municipalities which are proposed to be initial members of the joint municipal assistance agency. The governing board of the joint agency or municipality shall thereupon by ordinance or resolution appoint one commissioner and up to two alternate commissioners of the joint municipal assistance agency who may, at the discretion of the governing board, be an officer or employee of the joint agency or municipality. If two alternate commissioners are appointed, the governing board shall designate them as first or second alternate commissioner.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member joint agencies or municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective joint agency or municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint municipal assistance agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint municipal assistance agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint municipal assistance agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint municipal assistance agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners

executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint municipal assistance agency, the joint municipal assistance agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate or of any new or supplemental certificate hereinafter provided for, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member joint agencies or municipalities by the Secretary of State. If a commissioner of any such joint agency or municipality has not signed the application to the Secretary of State and such joint agency or municipality does not notify the Secretary of State of the appointment of a commissioner within 60 days after receipt of such notice, such joint agency or municipality shall be deemed to have elected not to be a member of the joint municipal assistance agency. As soon as practicable after the expiration of such 60-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those joint agencies or municipalities which have elected to become members of the joint municipal assistance agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(b) After the creation of a joint municipal assistance agency, any other joint agency (if organized by joint agencies) or municipality (if organized by municipalities) may become a member thereof upon application to such joint municipal assistance agency after the adoption of a resolution or ordinance by the governing board of the joint agency or municipality setting forth the determination and finding prescribed above for the original members and authorizing said municipality to become a member and appointing one commissioner, and with the consent of a majority of the board of commissioners of the joint municipal assistance agency. Any joint agency or municipality may withdraw from a joint municipal assistance agency, provided, however, that all obligations incurred by a joint agency or municipality while it was a member shall remain in full force and effect. Notice that a joint agency or municipality has been added to or withdrawn from membership in the joint municipal assistance agency shall be filed with the Secretary of State, and the Secretary of State shall thereupon issue a new or supplemental certificate of incorporation setting forth the names of all members of the joint municipal assistance agency. Additions of new members or withdrawal of members shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(c) The joint municipal assistance agency may be governed by a board of commissioners appointed as provided in subsections (a) and (b) of this section. It shall not be necessary to notify the Secretary of State of the appointment of any commissioners following the notifications referred to in subsections (a) and (b) of this section. Each commissioner shall have one vote and shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing joint agency or municipality and spread upon its minutes. The governing board of each of the joint agencies or

municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner representing such joint agency or municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, other than such commissioner's position as an officer, director or member of the executive committee. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. All powers, functions, rights and privileges of the joint municipal assistance agency shall be exercised or delegated by the board of commissioners.

(d) The board of commissioners of the joint municipal assistance agency shall annually elect one of the commissioners as president, another as vice president, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary or secretaries and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or any assistant secretary. The board of commissioners may also appoint and prescribe the duties of such additional officers as it deems necessary. The secretary or any assistant secretary of the joint municipal assistance agency shall keep a record of the proceedings of the joint municipal assistance agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint municipal assistance agency, the minute book or journal of the joint municipal assistance agency and its official seal. Either the secretary or any assistant secretary of the joint municipal assistance agency may cause copies to be made of all minutes and other records and documents of the joint municipal assistance agency and may give certificates under the official seal of the joint municipal assistance agency to the effect that such copies are true copies, and all persons dealing with the joint municipal assistance agency may rely upon such certificates.

(e) Fifty-one percent (51%) of the commissioners of a joint municipal assistance agency then in office shall constitute a quorum, and the commissioners may by written consent executed before or after any meeting waive notice and all other formalities incident to the calling or conduct of the same. Meetings of the commissioners may be held at any place within the State or any state contiguous to the State. A vacancy in the board of commissioners of the joint municipal assistance agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint municipal assistance agency. Any action taken by the joint municipal assistance agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. Except as specifically provided by the bylaws, a majority of the votes of the commissioners present shall be necessary and sufficient to take any action or to pass any resolution.

(f) The board of commissioners of the joint municipal assistance agency may, in its bylaws, provide for a board of directors of the joint municipal assistance agency to be selected from the commissioners and alternate commissioners. The board of directors shall have and exercise such of the powers and authority of the board of commissioners during the intervals between the board of commissioners' meetings as shall be prescribed in the bylaws, rules, motions

and resolutions of the board of commissioners. The terms of office of the members of the board of directors and the method of filling vacancies therein shall be fixed by the bylaws of the board of commissioners of the joint municipal assistance agency. The bylaws of the joint municipal assistance agency shall provide that the officers of the board of commissioners elected pursuant to subsection (d) of this section must also serve on the board of directors and hold the same offices thereon.

(g) The board of commissioners may also provide, in its bylaws or otherwise, that the board of directors shall create an executive committee of the board of directors composed of the officers of the board of directors, together with such other members of the board of directors as may be prescribed and that such executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between that board's meetings as shall be prescribed in the bylaws of the joint municipal assistance agency or in the rules or resolutions of the board of directors.

(h) The board of commissioners, board of directors and executive committee may provide or adopt methods and procedures consistent with other applicable laws for the calling or conducting of meetings or the taking of any action.

(i) No commissioner or director of a joint municipal assistance agency shall receive any compensation for the performance of his or her duties hereunder, provided, however, that each commissioner and director may be paid his or her necessary expenses incurred while engaged in the performance of such duties. (1983, c. 609, s. 7; 1985, c. 243, ss. 2, 3; 1995, c. 412, s. 22.)

#### **§ 159B-43.1. Alternative to board of commissioners.**

(a) In lieu of the provisions of G.S. 159B-43(c) through (i), a joint municipal assistance agency organized by two or more joint agencies, by resolutions adopted by each of those joint agencies, may be governed by an executive committee created pursuant to the provisions of G.S. 159B-10. In that case, the commissioners of the joint municipal assistance agency appointed pursuant to the provisions of G.S. 159B-43(a) and (b) shall adopt a resolution substantially identical to the resolutions adopted by the joint agencies creating the executive committee. The terms of office, methods of filling vacancies, and such other matters involving the executive committee shall be as set forth in those resolutions.

(b) In connection with a joint municipal assistance agency governed pursuant to the provisions of subsection (a) of this section, member municipalities of that joint municipal assistance agency which are not members of the joint agencies organizing that joint municipal assistance agency and nonmunicipal members, as defined in G.S. 159B-50, may elect members to the executive committee pursuant to those procedures as they agree upon among themselves, but subject to the following: if the number of the member municipalities and nonmunicipal members is seven or less, those municipalities and nonmunicipal members, acting jointly, may appoint one member to the executive committee, and if the number of the member municipalities and nonmunicipal members is more than seven, those member municipalities and nonmunicipal members, acting jointly, may appoint two members to the executive committee.

(c) Members of the executive committee appointed by the member municipalities and nonmunicipal members, and members of any subcommittee created by those member municipalities and nonmunicipal members, may receive compensation, and be paid expenses, for the performance of their duties as determined by the member municipalities and nonmunicipal members appointing those members. However, for any member of an executive committee who is an employee of a member municipality or nonmunicipal member, a payment in lieu of any

compensation shall be made to the member municipality or nonmunicipal member for distribution to the executive committee member in the manner and amount, if any, it deems appropriate. (1995, c. 412, s. 23.)

**§ 159B-44. General powers of joint municipal assistance agencies and municipalities.**

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

- (1) To establish and from time to time modify a schedule of dues and assessments and to provide that the payment thereof when due shall be prerequisite to voting at any meeting and participation in and enjoyment of rights or benefits of the joint municipal assistance agency;
- (2) To appropriate for the purposes of the joint municipal assistance agency the funds derived from dues and assessments, and from any other source;
- (3) To provide aid and assistance to any one or more municipalities, and to act for or on behalf of any one or more municipalities, in any activity related to the construction, ownership, maintenance, expansion or operation of an electric system, upon such terms, conditions and considerations as may be agreed to between the municipalities and the joint municipal assistance agency;
- (4) To provide aid and assistance to any one or more joint agencies, and to act for or on behalf of any one or more joint agencies in the exercise of any power, function, right, privilege or immunity granted by Article 2 of this Chapter, upon such terms, conditions and considerations as may be agreed to between the joint agency and the joint municipal assistance agency;
- (5) To provide property and services to any one or more municipalities or joint agencies upon such terms, conditions and considerations as may be agreed to between the municipalities or joint agency and the joint municipal assistance agency;
- (6) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (7) To adopt an official seal and alter the same at pleasure;
- (8) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned together with any joint agency or agencies, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;
- (9) To sue and be sued in its own name, and to plead and be impleaded;
- (10) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (11) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
- (12) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein; provided, however, that property acquired by a joint municipal

assistance agency from a municipality without consideration or for a consideration other than the fair market value thereof as determined by the governing board of the municipality may only be disposed of in accordance with the procedures set forth in Article 12 of Chapter 160A of the General Statutes;

- (13) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint municipal assistance agency, including contracts with municipalities, joint agencies, persons, firms, corporations and others, provided, however, that such contracts shall not unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems;
- (14) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint municipal assistance agency and to fix and pay their compensation from funds available to the joint municipal assistance agency therefor; and
- (15) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint municipal assistance agency herein.

Any municipality or joint agency is authorized to appropriate and pay funds to a joint municipal assistance agency and to enter into contracts or arrangements with a joint municipal assistance agency for the purposes and in the execution of the functions and powers of the municipality or joint agency.

Joint municipal assistance agencies shall comply with Article 8 of Chapter 143 of the General Statutes respecting acquisition or construction of property to the same extent required of municipalities; provided, however, that Article 8 of Chapter 143 of the General Statutes shall not apply to a municipality, joint municipal assistance agency or joint agency in transactions between a joint municipal assistance agency and a municipality or joint agency involving the transfer or construction of property.

Property owned by a joint municipal assistance agency or jointly owned by municipalities or joint agencies and joint municipal assistance agencies shall be exempt from property taxes; provided, however, that each joint municipal assistance agency shall, in lieu of property taxes, pay to any governmental agency authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of such agency if such property were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. (1983, c. 609, s. 7; 1995, c. 412, s. 24; 2008-38, s. 1.)

#### **§ 159B-45. Dissolution.**

Whenever the governing board of a joint municipal assistance agency and the governing boards of its member joint agencies or municipalities shall by resolution or ordinance determine that the purposes for which the joint municipal assistance agency was formed have been substantially fulfilled and that all obligations incurred by the joint municipal assistance agency have been fully paid or satisfied, the governing board of the joint municipal assistance agency may by resolution

declare the joint municipal assistance agency to be dissolved. On the effective date of such resolution declaring the joint agency to be dissolved, the title to all funds and other property owned by the joint municipal assistance agency at the time of such dissolution shall vest in the members of the joint municipal assistance agency as provided in this Chapter and the bylaws of the joint municipal assistance agency. Notice of such dissolution shall be filed with the Secretary of State. (1983, c. 609, s. 7; 1995, c. 412, s. 25.)

#### **§ 159B-46. Reports, liability, and personnel.**

(a) Each joint municipal assistance agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its members. Each such report shall set forth an operating and financial statement covering the operations of the joint municipal assistance agency during such year. The joint municipal assistance agency shall cause an audit of its books of record and accounts to be made at least once in each year by independent certified public accountants.

(b) No commissioner, alternate commissioner or director or officer of any joint municipal assistance agency, member of an executive committee created pursuant to G.S. 159B-10, officer of any joint agency or municipality, or person or persons acting in their behalf, while acting within the scope of his authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Article.

(c) Each municipality, joint agency and joint municipal assistance agency shall be severally liable for its own acts or omissions and not jointly or severally liable for the acts, omissions, or obligations of others, including other municipalities.

(d) In no event shall any municipality or joint agency be liable or responsible for any acts, omissions or obligations of any joint municipal assistance agency or any of its officers, members of an executive committee, employees or agents; provided, however, that contracts between the joint municipal assistance agency and one or more municipalities or one or more joint agencies may expressly provide for the imputation of or indemnification for any liability of one party thereto by the other, or for the assumption of any obligation of one party thereto by the other.

(e) Personnel employed or appointed by a municipality and performing services for or on behalf of a joint municipal assistance agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

(f) Personnel employed or appointed by a joint municipal assistance agency shall be qualified for participation in the North Carolina Local Government Employees' Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

(g) The offices of commissioner, alternate commissioner, officer, director and member of the executive committee of a joint municipal assistance agency are hereby declared to be offices which may be held by the holder of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute. (1983, c. 609, s. 7; 1991, c. 636, s. 3; 1995, c. 412, s. 26.)

#### **§ 159B-47. Defense.**

(a) The board of commissioners of a joint municipal assistance agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, director, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee of the joint municipal assistance agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(b) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, directors, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or any act allegedly done or omission allegedly made in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint municipal assistance agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, directors, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, director, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint municipal assistance agency may purchase insurance coverage for payment of claims or judgments pursuant to this section. (1985, c. 225, s. 2; 1995, c. 412, s. 27.)

#### **§ 159B-48. Nonmunicipal members; constituent institutions of The University of North Carolina.**

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, any constituent institution of The University of North Carolina, as defined in Article 1 of Chapter 116 of the General Statutes, that owns a system or facility for the generation, transmission, or distribution of electric power and energy for public and private use, may become a member of a joint municipal assistance agency. The commissioner and one or more alternate commissioners designated by any such members shall be appointed by its local governing board. As a member, the constituent institution has all the rights, privileges, immunities, powers, authority, and responsibilities of a municipal member of a joint municipal assistance agency under Article 3 of this Chapter, including, the protection and immunities granted under Article 3 to those employed, appointed or otherwise acting on behalf of the constituent institutions, and the power and authority to enter into contracts and arrangements with a joint municipal assistance agency. (1991, c. 291, s. 1; 1995, c. 412, s. 28.)

#### **§ 159B-49. Associate members.**

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, a joint municipal assistance agency may, in its bylaws, create associate memberships. An associate member of a joint municipal assistance agency shall have only those rights, privileges, immunities, powers, authority, and responsibilities as set forth in the bylaws of the joint municipal assistance agency; provided, that:



- (1) An associate member shall not have the right to appoint a commissioner or alternate commissioner, have the right to vote or otherwise participate in decisions of the joint municipal assistance agency;
- (2) An associate member shall not have the right to a distribution of assets upon dissolution of the joint municipal assistance agency; and
- (3) Income from the joint municipal assistance agency shall not accrue to, or otherwise inure to the benefit of, an associate member. (1991, c. 291, s. 2.)

**§ 159B-50. Reserved for future codification purposes.**

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