

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

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HOUSE BILL 1389
PROPOSED COMMITTEE SUBSTITUTE H1389-PCS50754-LD-31

Short Title: Finance Energy Improvement With Assessments.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ANY CITY AND ANY COUNTY TO DESIGNATE AN AREA
3 WITHIN THE CITY AND THE COUNTY RESPECTIVELY WITHIN WHICH
4 DESIGNATED AREA LOCAL GOVERNMENT OFFICIALS AND FREE AND
5 WILLING PROPERTY OWNERS MAY ENTER INTO LOAN AGREEMENTS
6 WHEREBY THE LOANS ARE TO BE REPAID BY CONTRACTUAL ASSESSMENTS,
7 TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION
8 RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS
9 THAT ARE PERMANENTLY AFFIXED TO REAL PROPERTY.

10 Whereas, there now exists a unique opportunity for cities and counties to obtain
11 federal funds under the American Recovery and Reinvestment Act of 2009, P.L. 111-5
12 (ARRA), during the 2009-2011 biennium to finance a program for cities and counties to
13 provide loans to property owners for the upfront costs of installing renewable energy sources or
14 the upfront costs of making residential, commercial, industrial, or other real property more
15 energy efficient; and

16 Whereas, cities and counties need authority to provide for the repayment of these
17 loans by contractual assessments; Now, therefore,
18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Chapter 160A of the General Statutes is amended by adding a new
20 Article to read:

21 "Article 10B.

22 "Contractual Assessments for Renewable Energy and Energy Efficiency Improvements to Real
23 Property.

24 **"§ 160A-239.10. Intent; scope of Article.**

25 (a) It is the intent of the General Assembly that this Article authorize cities to establish
26 programs to finance the installation of distributed generation renewable energy sources or
27 energy efficiency improvements that are permanently fixed to residential, commercial,
28 industrial, or other real property.

29 (b) This Article shall not be used to finance the purchase or installation of appliances
30 that are not permanently fixed to residential, commercial, industrial, or other real property.
31 Assessments may be levied pursuant to this Article only with the free and willing consent of the
32 owner of each lot or parcel on which an assessment is levied at the time the assessment is
33 levied.

34 **"§ 160A-239.11. Findings.**



* H 1 3 8 9 - P C S 5 0 7 5 4 - L D - 3 1 *

1 (a) The General Assembly finds all of the following:

2 (1) To promote the development of renewable energy and energy efficiency, the
3 General Assembly established the Renewable Energy and Energy Efficiency
4 Portfolio Standard (REPS) in G.S. 62-133.8. Accordingly, renewable energy
5 and energy efficiency serve the public interest in all of the following ways:

6 a. By contributing to the availability of an adequate and reliable supply
7 of electric power to the people of North Carolina.

8 b. By diversifying the resources used to reliably meet the energy needs
9 of consumers in cities.

10 c. By providing greater energy security to city residents through the use
11 of indigenous energy resources available within cities.

12 d. By encouraging private investment in renewable energy and energy
13 efficiency.

14 e. By providing improved air quality and other benefits to energy
15 consumers and citizens of cities.

16 f. By helping cities reduce air pollution in order to attain air quality
17 standards in nonattainment areas under the federal Clean Air Act.

18 g. By reducing the consumption of fossil fuels and reducing our
19 dependence on foreign energy sources, thereby protecting our
20 national security.

21 h. By decreasing the likelihood of experiencing electric power
22 blackouts or brownouts in cities, thereby increasing public safety in
23 cities.

24 (2) Expanding renewable energy sources and energy efficiency improvements to
25 residential, commercial, industrial, or other real property in cities contributes
26 to the creation of green jobs.

27 (3) Under existing law, cities have an integral role in promoting the efficient and
28 wise use of energy within their jurisdictional boundaries.

29 (4) The upfront cost of renewable energy sources or of making residential,
30 commercial, industrial, or other real property more energy efficient prevents
31 many property owners in cities from making those improvements.
32 Authorizing an alternative procedure to authorize cities to extend loans to be
33 repaid through contractual assessments to finance the upfront cost of
34 renewable energy sources and energy efficiency improvements will make
35 those improvements more affordable, thereby promoting the installation of
36 those improvements.

37 (b) The General Assembly declares that, in addition to the public interests served by
38 renewable energy sources and energy efficiency under subdivision (1) of subsection (a) of this
39 section, the public interest further will be served by establishing a contractual assessment
40 program that provides the governing body of any city with the authority to finance the
41 installation of distributed generation renewable energy sources and energy efficiency
42 improvements that are permanently fixed to residential, commercial, industrial, or other real
43 property.

44 "§ 160A-239.12. Designation of area within city.

45 (a) The governing body of any city may determine that it would be convenient,
46 advantageous, and in the public interest to designate an area within the city, which may
47 encompass the entire city or a lesser portion, consisting of contiguous or noncontiguous areas,
48 within which authorized city officials may enter into loan agreements with property owners to
49 be repaid through contractual assessments to finance the installation of distributed generation
50 renewable energy sources or energy efficiency improvements that are permanently fixed to real
51 property pursuant to this Article.

1 (b) The governing body shall make the determination under subsection (a) of this
2 section by adopting a resolution indicating its intention to do so. The resolution of intention
3 shall include a statement that the city proposes to make contractual assessment financing
4 available to property owners, shall identify the kinds of distributed generation renewable
5 energy sources or energy efficiency improvements that may be financed, shall describe the
6 boundaries of the area within which contractual assessments may be entered into, and shall
7 briefly describe the proposed arrangements for financing the program. The resolution of
8 intention shall state that it is in the public interest to finance loans to property owners for the
9 installation of distributed generation renewable energy sources or energy efficiency
10 improvements, or both, under subsection (a) of this section, and that these loans shall be repaid
11 through contractual assessments imposed on the property. The resolution shall state that a
12 public hearing shall be held at which interested persons may object to or inquire about the
13 proposed program or any of its particulars and shall state the time and place of the hearing. The
14 resolution shall direct an appropriate city official to prepare a report pursuant to
15 G.S. 160A-239.15 and to enter into consultations with the county assessor in order to reach
16 agreement on what additional fees, if any, will be charged for collecting the proposed
17 contractual assessments with the ad valorem taxes of the city on real property.

18 (c) As used in this Article, 'renewable energy source' has the same meaning as
19 'renewable energy resource' in G.S. 62-133.8.

20 **"§ 160A-239.13. Financing of renewable energy and energy efficiency improvements to**
21 **real property.**

22 A city may advance its unrestricted revenue to finance the program for the installation of
23 distributed generation renewable energy sources or energy efficiency improvements that are
24 permanently fixed to real property by extending loans to property owners for the purchase of
25 renewable energy and energy efficiency improvements under this Article, the principal and
26 interest for which would be repaid by contractual assessments. The city shall set forth the
27 process for financing the program and for entering into a loan agreement under this section in
28 the city resolution forming the district under G.S. 160A-239.12. A city also may use grant
29 monies it receives from the United States, the State, or any other source to finance the program.

30 **"§ 160A-239.14. City official may authorize owner to purchase renewable energy and**
31 **energy efficiency improvements.**

32 Upon the written consent of an authorized city official, the proposed loan agreement for
33 financing the program for the installation of distributed generation renewable energy sources or
34 energy efficiency improvements that are permanently fixed to real property under
35 G.S. 160A-239.13 may authorize the property owner to purchase directly the related equipment
36 and materials for the installation of distributed generation renewable energy sources or energy
37 efficiency improvements and to contract directly for the installation of distributed generation
38 renewable energy sources or energy efficiency improvements that are permanently fixed to the
39 property owner's residential, commercial, industrial, or other real property.

40 **"§ 160A-239.15. Assessment report prepared by city official.**

41 The report required under G.S. 160A-239.12 shall contain all of the following:

- 42 (1) A map showing the boundaries of the territory within which contractual
43 assessments are proposed to be offered.
- 44 (2) A draft contract specifying the terms and conditions that would be agreed to
45 by a property owner within the contractual assessment area and the city.
- 46 (3) A statement of city policies concerning contractual assessments including all
47 of the following:
 - 48 a. Identification of the types of distributed generation renewable energy
49 sources or energy efficiency improvements that may be financed by
50 loans through the use of contractual assessments.

- 1 b. Identification of a city official authorized to enter into loan
2 agreements and contractual assessments on behalf of the city.
3 c. A maximum aggregate dollar amount of the contractual assessments.
4 d. A method for setting requests from property owners for financing
5 through loans repaid by contractual assessments in priority order in
6 the event that requests appear likely to exceed the authorized
7 maximum aggregate dollar amount of the contractual assessments.
8 e. Criteria for determining a property owner's eligibility to participate in
9 the program, which may include a means to determine the property
10 owner's credit worthiness.

11 (4) A plan for raising a capital amount required to pay for work performed
12 pursuant to contractual assessments. The plan may include amounts to be
13 advanced by the city through funds available to it from unrestricted revenue
14 or grant funds. The plan shall include a statement of or method for
15 determining the interest rate and time period during which contracting
16 property owners would pay any assessment. The plan shall provide for any
17 reserve funds. The plan shall provide for the apportionment of all or any
18 portion of the costs incidental to the administration of the contractual
19 assessment program among the consenting property owners and the city.

20 (5) A report on the results of the consultations with the county assessor
21 concerning the additional fees, if any, that will be charged for collecting the
22 proposed contractual assessments with the ad valorem taxes of the city on
23 real property and a plan for financing the payment of those fees.

24 **"§ 160A-239.16. Notice of public hearing.**

25 A notice of the hearing required under G.S. 160A-239.12 shall be published in a newspaper
26 having general circulation in the city in which an area is being proposed for a designation under
27 G.S. 160A-239.12 in the same manner provided by Rule 4(j1) of the Rules of Civil Procedure,
28 Chapter 1A of the General Statutes, for the service of a summons on a party that cannot
29 otherwise be served. The first publication shall occur not later than 20 days before the date of
30 the hearing.

31 **"§ 160A-239.17. Public hearing.**

32 At the time of the public hearing on the proposed program, the report under
33 G.S. 160A-239.15 shall be summarized, and the governing board of the city shall afford all
34 persons who are present an opportunity to comment upon, object to, or present evidence with
35 regard to the proposed contractual assessment program, the extent of the area proposed to be
36 included within the program, the terms and conditions of the draft contract, or the proposed
37 financing provisions. At the conclusion of the hearing, the governing board of the city may
38 adopt a resolution confirming the report or may direct its modification in any respect and
39 thereafter may adopt a resolution confirming the report as modified, or the governing board of
40 the city may abandon the proceedings. The governing board of the city shall not increase the
41 area within which contractual assessments would be offered without providing notice of the
42 proposed increase in area pursuant to G.S. 160A-239.16. The hearing may be continued from
43 time to time not exceeding a total of 180 days.

44 **"§ 160A-239.18. Levy of contractual assessments for renewable energy and energy**
45 **efficiency improvements to real property.**

46 Assessments levied pursuant to this Article, and the interest and any penalties thereon, shall
47 constitute a lien against the lots and parcels of land on which they are made until they are paid.
48 Article 10 of this Chapter applies to the levy and collection of assessments levied pursuant to
49 this Article, insofar as those provisions are not in conflict with the provisions of this Article,
50 including, but not limited to, the collection of assessments in the same manner and at the same

1 time as the ad valorem taxes of the city on real property are payable and any penalties and
2 remedies and lien priorities in the event of delinquency and default.

3 **"§ 160A-239.19. Recording of contractual assessments for renewable energy and energy**
4 **efficiency improvements to real property.**

5 The governing board of the city shall direct its clerk to record a notice of the existence and
6 amount of each contractual assessment with the register of deeds of the county in which the lot
7 or parcel is located. The register of deeds shall accept those filings and may charge the clerk a
8 fee for recording those documents pursuant to G.S. 161-10. The failure of the clerk or register
9 of deeds to perform the filings shall not subject the local agency or any of its officers or
10 employees to civil liability."

11 **SECTION 2.** Chapter 153A of the General Statutes is amended by adding a new
12 Article to read:

13 "Article 9B.

14 "Contractual Assessments for Renewable Energy and Energy Efficiency Improvements to Real
15 Property.

16 **"§ 153A-210.10. Intent; scope of Article.**

17 (a) It is the intent of the General Assembly that this Article authorize counties to
18 establish programs to finance the installation of distributed generation renewable energy
19 sources or energy efficiency improvements that are permanently fixed to residential,
20 commercial, industrial, or other real property.

21 (b) This Article shall not be used to finance the purchase or installation of appliances
22 that are not permanently fixed to residential, commercial, industrial, or other real property.
23 Assessments may be levied pursuant to this Article only with the free and willing consent of the
24 owner of each lot or parcel on which an assessment is levied at the time the assessment is
25 levied.

26 **"§ 153A-210.11. Findings.**

27 (a) The General Assembly finds all of the following:

28 (1) To promote the development of renewable energy and energy efficiency, the
29 General Assembly established the Renewable Energy and Energy Efficiency
30 Portfolio Standard (REPS) in G.S. 62-133.8. Accordingly, renewable energy
31 and energy efficiency serve the public interest in all of the following ways:

- 32 a. By contributing to the availability of an adequate and reliable supply
33 of electric power to the people of North Carolina.
34 b. By diversifying the resources used to reliably meet the energy needs
35 of consumers in counties.
36 c. By providing greater energy security to county residents through the
37 use of indigenous energy resources available within counties.
38 d. By encouraging private investment in renewable energy and energy
39 efficiency.
40 e. By providing improved air quality and other benefits to energy
41 consumers and citizens of counties.
42 f. By helping counties reduce air pollution in order to attain air quality
43 standards in nonattainment areas under the federal Clean Air Act.
44 g. By reducing the consumption of fossil fuels and reducing our
45 dependence on foreign energy sources, thereby protecting our
46 national security.
47 h. By decreasing the likelihood of experiencing electric power
48 blackouts or brownouts in counties, thereby increasing public safety
49 in counties.

1 (2) Expanding renewable energy sources and energy efficiency improvements to
2 residential, commercial, industrial, or other real property in counties
3 contributes to the creation of green jobs.

4 (3) Under existing law, counties have an integral role in promoting the efficient
5 and wise use of energy within their jurisdictional boundaries.

6 (4) The upfront cost of renewable energy sources or of making residential,
7 commercial, industrial, or other real property more energy efficient prevents
8 many property owners in counties from making those improvements.
9 Authorizing an alternative procedure to authorize counties to extend loans to
10 be repaid through contractual assessments to finance the upfront cost of
11 renewable energy sources and energy efficiency improvements will make
12 those improvements more affordable, thereby promoting the installation of
13 those improvements.

14 (b) The General Assembly declares that, in addition to the public interests served by
15 renewable energy sources and energy efficiency under subdivision (1) of subsection (a) of this
16 section, the public interest further will be served by establishing a contractual assessment
17 program that provides the governing body of any county with the authority to finance the
18 installation of distributed generation renewable energy sources and energy efficiency
19 improvements that are permanently fixed to residential, commercial, industrial, or other real
20 property.

21 **"§ 153A-210.12. Designation of area within county.**

22 (a) The governing body of any county may determine that it would be convenient,
23 advantageous, and in the public interest to designate an area within the county, which may
24 encompass the entire county or a lesser portion, consisting of contiguous or noncontiguous
25 areas, within which authorized county officials may enter into loan agreements with property
26 owners to be repaid through contractual assessments to finance the installation of distributed
27 generation renewable energy sources or energy efficiency improvements that are permanently
28 fixed to real property pursuant to this Article.

29 (b) The governing body shall make the determination under subsection (a) of this
30 section by adopting a resolution indicating its intention to do so. The resolution of intention
31 shall include a statement that the county proposes to make contractual assessment financing
32 available to property owners, shall identify the kinds of distributed generation renewable
33 energy sources or energy efficiency improvements that may be financed, shall describe the
34 boundaries of the area within which contractual assessments may be entered into, and shall
35 briefly describe the proposed arrangements for financing the program. The resolution of
36 intention shall state that it is in the public interest to finance loans to property owners for the
37 installation of distributed generation renewable energy sources or energy efficiency
38 improvements, or both, under subsection (a) of this section, and that these loans shall be repaid
39 through contractual assessments imposed on the property. The resolution shall state that a
40 public hearing shall be held at which interested persons may object to or inquire about the
41 proposed program or any of its particulars and shall state the time and place of the hearing. The
42 resolution shall direct an appropriate county official to prepare a report pursuant to
43 G.S. 153A-210.15 and to enter into consultations with the county assessor in order to reach
44 agreement on what additional fees, if any, will be charged for collecting the proposed
45 contractual assessments with the ad valorem taxes of the county on real property.

46 (c) Territory lying within the corporate limits of a city shall not be included within the
47 area designated under subsection (a) of this section unless the governing body of the city agrees
48 by resolution to being included in the area within which authorized county officials and
49 property owners may enter into contractual assessments under this Article.

50 (d) As used in this Article, 'renewable energy source' has the same meaning as
51 'renewable energy resource' in G.S. 62-133.8.

1 **"§ 153A-210.13. Financing of renewable energy and energy efficiency improvements to**
2 **real property.**

3 A county may advance its unrestricted revenue to finance the program for the installation of
4 distributed generation renewable energy sources or energy efficiency improvements that are
5 permanently fixed to real property by extending loans to property owners for the purchase of
6 renewable energy and energy efficiency improvements under this Article, the principal and
7 interest for which would be repaid by contractual assessments. The county shall set forth the
8 process for financing the program and for entering into a loan agreement under this section in
9 the county resolution forming the district under G.S. 153A-210.12. A county also may use
10 grant monies it receives from the United States, the State, or any other source to finance the
11 program.

12 **"§ 153A-210.14. County official may authorize owner to purchase renewable energy and**
13 **energy efficiency improvements.**

14 Upon the written consent of an authorized county official, the proposed loan agreement for
15 financing the program for the installation of distributed generation renewable energy sources or
16 energy efficiency improvements that are permanently fixed to real property under
17 G.S. 153A-210.13 may authorize the property owner to purchase directly the related equipment
18 and materials for the installation of distributed generation renewable energy sources or energy
19 efficiency improvements and to contract directly for the installation of distributed generation
20 renewable energy sources or energy efficiency improvements that are permanently fixed to the
21 property owner's residential, commercial, industrial, or other real property.

22 **"§ 153A-210.15. Assessment report prepared by county official.**

23 The report required under G.S. 153A-210.12 shall contain all of the following:

- 24 (1) A map showing the boundaries of the territory within which contractual
25 assessments are proposed to be offered.
- 26 (2) A draft contract specifying the terms and conditions that would be agreed to
27 by a property owner within the contractual assessment area and the county.
- 28 (3) A statement of county policies concerning contractual assessments including
29 all of the following:
- 30 a. Identification of the types of distributed generation renewable energy
31 sources or energy efficiency improvements that may be financed by
32 loans through the use of contractual assessments.
- 33 b. Identification of a county official authorized to enter into loan
34 agreements and contractual assessments on behalf of the county.
- 35 c. A maximum aggregate dollar amount of the contractual assessments.
- 36 d. A method for setting requests from property owners for financing
37 through loans repaid by contractual assessments in priority order in
38 the event that requests appear likely to exceed the authorized
39 maximum aggregate dollar amount of the contractual assessments.
- 40 e. Criteria for determining a property owner's eligibility to participate in
41 the program, which may include a means to determine the property
42 owner's credit worthiness.
- 43 (4) A plan for raising a capital amount required to pay for work performed
44 pursuant to contractual assessments. The plan may include amounts to be
45 advanced by the county through funds available to it from unrestricted
46 revenue or grant funds. The plan shall include a statement of or method for
47 determining the interest rate and time period during which contracting
48 property owners would pay any assessment. The plan shall provide for any
49 reserve funds. The plan shall provide for the apportionment of all or any
50 portion of the costs incidental to the administration of the contractual
51 assessment program among the consenting property owners and the county.

1 (5) A report on the results of the consultations with the county assessor
2 concerning the additional fees, if any, that will be charged for collecting the
3 proposed contractual assessments with the ad valorem taxes of the county on
4 real property and a plan for financing the payment of those fees.

5 **"§ 153A-210.16. Notice of public hearing.**

6 A notice of the hearing required under G.S. 153A-210.12 shall be published in a newspaper
7 having general circulation in the county in which an area is being proposed for a designation
8 under G.S. 153A-210.12 in the same manner provided by Rule 4(j1) of the Rules of Civil
9 Procedure, Chapter 1A of the General Statutes, for the service of a summons on a party that
10 cannot otherwise be served. The first publication shall occur not later than 20 days before the
11 date of the hearing.

12 **"§ 153A-210.17. Public hearing.**

13 At the time of the public hearing on the proposed program, the report under
14 G.S. 153A-210.15 shall be summarized, and the governing board of the county shall afford all
15 persons who are present an opportunity to comment upon, object to, or present evidence with
16 regard to the proposed contractual assessment program, the extent of the area proposed to be
17 included within the program, the terms and conditions of the draft contract, or the proposed
18 financing provisions. At the conclusion of the hearing, the governing board of the county may
19 adopt a resolution confirming the report or may direct its modification in any respect and
20 thereafter may adopt a resolution confirming the report as modified, or the governing board of
21 the county may abandon the proceedings. The governing board of the county shall not increase
22 the area within which contractual assessments would be offered without providing notice of the
23 proposed increase in area pursuant to G.S. 153A-210.16. The hearing may be continued from
24 time to time not exceeding a total of 180 days.

25 **"§ 153A-210.18. Levy of contractual assessments for renewable energy and energy**
26 **efficiency improvements to real property.**

27 Assessments levied pursuant to this Article, and the interest and any penalties thereon, shall
28 constitute a lien against the lots and parcels of land on which they are made until they are paid.
29 Article 9 of this Chapter applies to the levy and collection of assessments levied pursuant to
30 this Article, insofar as those provisions are not in conflict with the provisions of this Article,
31 including, but not limited to, the collection of assessments in the same manner and at the same
32 time as the ad valorem taxes of the county on real property are payable and any penalties and
33 remedies and lien priorities in the event of delinquency and default.

34 **"§ 153A-210.19. Recording of contractual assessments for renewable energy and energy**
35 **efficiency improvements to real property.**

36 The governing board of the county shall direct its clerk to record a notice of the existence
37 and amount of each contractual assessment with the register of deeds of the county in which the
38 lot or parcel is located. The register of deeds shall accept those filings and may charge the clerk
39 a fee for recording those documents pursuant to G.S. 161-10. The failure of the clerk or register
40 of deeds to perform the filings shall not subject the local agency or any of its officers or
41 employees to civil liability."

42 **SECTION 3.** This act is effective when it becomes law.