

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1389  
Committee Substitute Favorable 7/6/09  
PROPOSED COMMITTEE SUBSTITUTE H1389-PCS50764-TDx-65

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 fiscal 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 purchase and installation of distributed generation renewable energy  
27 sources or energy efficiency improvements that are permanently fixed to residential,  
28 commercial, 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.



\* H 1 3 8 9 - P C S 5 0 7 6 4 - T D X - 6 5 \*

**"§ 160A-239.11. Findings.**

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

- (1) To promote the development of renewable energy and energy efficiency, the General Assembly established the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) in G.S. 62-133.8. Accordingly, renewable energy and energy efficiency serve the public interest in all of the following ways:
  - a. By contributing to the availability of an adequate and reliable supply of electric power to the people of North Carolina.
  - b. By diversifying the resources used to reliably meet the energy needs of consumers in cities.
  - c. By providing greater energy security to city residents through the use of indigenous energy resources available within cities.
  - d. By encouraging private investment in renewable energy and energy efficiency.
  - e. By providing improved air quality and other benefits to energy consumers and citizens of cities.
  - f. By helping cities reduce air pollution in order to attain air quality standards in nonattainment areas under the federal Clean Air Act.
  - g. By reducing the consumption of fossil fuels and reducing our dependence on foreign energy sources, thereby protecting our national security.
  - h. By decreasing the likelihood of experiencing electric power blackouts or brownouts in cities, thereby increasing public safety in cities.
- (2) Expanding renewable energy sources and energy efficiency improvements to residential, commercial, industrial, or other real property in cities contributes to the creation of green jobs.
- (3) Under existing law, cities have an integral role in promoting the efficient and wise use of energy within their jurisdictional boundaries.
- (4) The upfront cost of renewable energy sources or of making residential, commercial, industrial, or other real property more energy efficient prevents many property owners in cities from making those improvements. Authorizing an alternative procedure to authorize cities to extend loans to be repaid through contractual assessments to finance the upfront cost of renewable energy sources and energy efficiency improvements will make those improvements more affordable, thereby promoting the installation of those improvements.

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

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

(a) The governing body of any city may designate an area within the city, which may encompass the entire city or a lesser portion, consisting of contiguous or noncontiguous areas, within which authorized city officials may enter into loan agreements with property owners to be repaid through contractual assessments to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real 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 all of the following:

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

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

25 **"§ 160A-239.13. Financing of renewable energy and energy efficiency improvements to**  
26 **real property.**

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

35 **"§ 160A-239.14. City official may authorize owner to purchase renewable energy and**  
36 **energy efficiency improvements.**

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

45 **"§ 160A-239.15. Assessment report prepared by city official.**

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

- 47            (1) A map showing the boundaries of the territory within which contractual  
48 assessments are proposed to be offered.  
49            (2) A draft contract specifying the terms and conditions that would be agreed to  
50 by a property owner within the contractual assessment area and the city.

- 1           (3) A statement of city policies concerning contractual assessments, including  
2 all of the following:  
3           a. Identification of the types of distributed generation renewable energy  
4 sources or energy efficiency improvements that may be financed by  
5 loans through the use of contractual assessments.  
6           b. Identification of a city official authorized to enter into loan  
7 agreements and contractual assessments on behalf of the city.  
8           c. A maximum aggregate dollar amount of the contractual assessments.  
9           d. A method for setting requests from property owners for financing  
10 through loans repaid by contractual assessments in priority order in  
11 the event that requests appear likely to exceed the authorized  
12 maximum aggregate dollar amount of the contractual assessments.  
13           e. Criteria for determining a property owner's eligibility to participate in  
14 the program, which may include a means to determine the property  
15 owner's creditworthiness.  
16           (4) A plan for raising a capital amount required to pay for work performed  
17 pursuant to contractual assessments. The plan may include amounts to be  
18 advanced by the city through funds available to it from unrestricted revenue  
19 or grant funds. The plan shall include a statement of or method for  
20 determining the interest rate and time period during which contracting  
21 property owners would pay any assessment. The plan shall provide for any  
22 reserve funds. The plan shall provide for the apportionment of all or any  
23 portion of the costs incidental to the administration of the contractual  
24 assessment program among the consenting property owners and the city.  
25           (5) A report on the results of the consultations with the county assessor  
26 concerning the additional fees, if any, that will be charged for collecting the  
27 proposed contractual assessments with the ad valorem taxes of the city on  
28 real property and a plan for financing the payment of those fees.

29 **"§ 160A-239.16. Notice of public hearing.**

30 A notice of the hearing required under G.S. 160A-239.12 shall be published in a newspaper  
31 having general circulation in the city in which an area is being proposed for a designation under  
32 G.S. 160A-239.12 for three successive weeks in a newspaper that is qualified for legal  
33 advertisement in accordance with G.S. 1-597 and G.S. 1-598. The first publication shall occur  
34 not later than 20 days before the date of the hearing.

35 **"§ 160A-239.17. Public hearing.**

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

48 **"§ 160A-239.18. Levy of contractual assessments for renewable energy and energy**  
49 **efficiency improvements to real property.**

50 Assessments levied pursuant to this Article, and the interest and any penalties thereon, shall  
51 constitute a lien against the lots and parcels of land on which they are made until they are paid.

1 Article 10 of this Chapter applies to the levy and collection of assessments levied pursuant to  
2 this Article, insofar as those provisions are not in conflict with the provisions of this Article,  
3 including the collection of assessments in the same manner and at the same time as the ad  
4 valorem taxes of the city on real property are payable and any penalties and remedies and lien  
5 priorities in the event of delinquency and default.

6 **"§ 160A-239.19. Recording of contractual assessments for renewable energy and energy**  
7 **efficiency improvements to real property.**

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

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

16 "Article 9B.

17 "Contractual Assessments for Renewable Energy and Energy Efficiency Improvements to Real  
18 Property.

19 **"§ 153A-210.10. Intent; scope of Article.**

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

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

29 **"§ 153A-210.11. Findings.**

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

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

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

1           h. By decreasing the likelihood of experiencing electric power  
2           blackouts or brownouts in counties, thereby increasing public safety  
3           in counties.

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

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

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

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

24           **"§ 153A-210.12. Designation of area within county.**

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

31           (b) The governing body shall make the determination under subsection (a) of this  
32           section by adopting a resolution indicating its intention to do so. The resolution of intention  
33           shall include all of the following:

34           (1) A statement that the county proposes to make contractual assessment  
35           financing available to property owners.

36           (2) The kinds of distributed generation renewable energy sources or energy  
37           efficiency improvements that may be financed.

38           (3) The boundaries of the area within which contractual assessments may be  
39           entered.

40           (4) A description of the proposed arrangements for financing the program.

41           (5) A statement that it is in the public interest to finance loans to property  
42           owners for the installation of distributed generation renewable energy  
43           sources or energy efficiency improvements, or both, and that these loans  
44           shall be repaid through contractual assessments imposed on the property.

45           (6) Notice that a public hearing shall be held at which interested persons may  
46           object to or inquire about the proposed program or any of its particulars and  
47           shall state the time and place of the hearing.

48           (7) The resolution shall direct an appropriate county official to prepare a report  
49           pursuant to G.S. 153A-210.15 and to enter into consultations with the county  
50           assessor in order to reach agreement on what additional fees, if any, will be

1 charged for collecting the proposed contractual assessments with the ad  
2 valorem taxes of the city on real property.

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

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

9 **"§ 153A-210.13. Financing of renewable energy and energy efficiency improvements to**  
10 **real property.**

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

20 **"§ 153A-210.14. County official may authorize owner to purchase renewable energy and**  
21 **energy efficiency improvements.**

22 Upon the written consent of an authorized county official, the proposed loan agreement for  
23 financing the program for the installation of distributed generation renewable energy sources or  
24 energy efficiency improvements that are permanently fixed to real property under  
25 G.S. 153A-210.13 may authorize the property owner to purchase directly the related equipment  
26 and materials for the installation of distributed generation renewable energy sources or energy  
27 efficiency improvements and to contract directly for the installation of distributed generation  
28 renewable energy sources or energy efficiency improvements that are permanently fixed to the  
29 property owner's residential, commercial, industrial, or other real property.

30 **"§ 153A-210.15. Assessment report prepared by county official.**

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

- 32 (1) A map showing the boundaries of the territory within which contractual  
33 assessments are proposed to be offered.  
34 (2) A draft contract specifying the terms and conditions that would be agreed to  
35 by a property owner within the contractual assessment area and the county.  
36 (3) A statement of county policies concerning contractual assessments,  
37 including all of the following:  
38 a. Identification of the types of distributed generation renewable energy  
39 sources or energy efficiency improvements that may be financed by  
40 loans through the use of contractual assessments.  
41 b. Identification of a county official authorized to enter into loan  
42 agreements and contractual assessments on behalf of the county.  
43 c. A maximum aggregate dollar amount of the contractual assessments.  
44 d. A method for setting requests from property owners for financing  
45 through loans repaid by contractual assessments in priority order in  
46 the event that requests appear likely to exceed the authorized  
47 maximum aggregate dollar amount of the contractual assessments.  
48 e. Criteria for determining a property owner's eligibility to participate in  
49 the program, which may include a means to determine the property  
50 owner's creditworthiness.

- 1           (4) A plan for raising a capital amount required to pay for work performed  
2 pursuant to contractual assessments. The plan may include amounts to be  
3 advanced by the county through funds available to it from unrestricted  
4 revenue or grant funds. The plan shall include a statement of or method for  
5 determining the interest rate and time period during which contracting  
6 property owners would pay any assessment. The plan shall provide for any  
7 reserve funds. The plan shall provide for the apportionment of all or any  
8 portion of the costs incidental to the administration of the contractual  
9 assessment program among the consenting property owners and the county.  
10          (5) A report on the results of the consultations with the county assessor  
11 concerning the additional fees, if any, that will be charged for collecting the  
12 proposed contractual assessments with the ad valorem taxes of the county on  
13 real property and a plan for financing the payment of those fees.

14 **"§ 153A-210.16. Notice of public hearing.**

15       A notice of the hearing required under G.S. 153A-210.12 shall be published in a newspaper  
16 having general circulation in the county in which an area is being proposed for a designation  
17 under G.S. 153A-210.12 for three successive weeks in a newspaper that is qualified for legal  
18 advertisement in accordance with G.S. 1-597 and G.S. 1-598. The first publication shall occur  
19 not later than 20 days before the date of the hearing.

20 **"§ 153A-210.17. Public hearing.**

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

33 **"§ 153A-210.18. Levy of contractual assessments for renewable energy and energy**  
34 **efficiency improvements to real property.**

35       Assessments levied pursuant to this Article, and the interest and any penalties thereon, shall  
36 constitute a lien against the lots and parcels of land on which they are made until they are paid.  
37 Article 9 of this Chapter applies to the levy and collection of assessments levied pursuant to  
38 this Article, insofar as those provisions are not in conflict with the provisions of this Article,  
39 including the collection of assessments in the same manner and at the same time as the ad  
40 valorem taxes of the county on real property are payable and any penalties and remedies and  
41 lien priorities in the event of delinquency and default.

42 **"§ 153A-210.19. Recording of contractual assessments for renewable energy and energy**  
43 **efficiency improvements to real property.**

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

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