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HOUSE BILL 1389
Committee Substitute Favorable 7/6/09
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Short Title: Finance Energy Improvement With Assessments.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

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

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

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

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

"Article 10B.

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

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

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

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

"§ 160A-239.11. Findings.



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 designate an area within the city, which may
46 encompass the entire city or a lesser portion, consisting of contiguous or noncontiguous areas,
47 within which authorized city officials may enter into loan agreements with property owners to
48 be repaid through contractual assessments to finance the installation of distributed generation
49 renewable energy sources or energy efficiency improvements that are permanently fixed to real
50 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 in the
5 event of delinquency and default. The lien for a contractual assessment is inferior to all prior
6 liens."

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

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

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

17 "Article 9B.

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

20 **"§ 153A-210.10. Intent; scope of Article.**

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

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

30 **"§ 153A-210.11. Findings.**

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

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

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

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

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

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