

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

2

HOUSE BILL 1389  
Committee Substitute Favorable 7/6/09

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.**

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

36 (1) To promote the development of renewable energy and energy efficiency, the  
37 General Assembly established the Renewable Energy and Energy Efficiency



\* H 1 3 8 9 - V - 2 \*

1 Portfolio Standard (REPS) in G.S. 62-133.8. Accordingly, renewable energy  
2 and energy efficiency serve the public interest in all of the following ways:

- 3 a. By contributing to the availability of an adequate and reliable supply  
4 of electric power to the people of North Carolina.  
5 b. By diversifying the resources used to reliably meet the energy needs  
6 of consumers in cities.  
7 c. By providing greater energy security to city residents through the use  
8 of indigenous energy resources available within cities.  
9 d. By encouraging private investment in renewable energy and energy  
10 efficiency.  
11 e. By providing improved air quality and other benefits to energy  
12 consumers and citizens of cities.  
13 f. By helping cities reduce air pollution in order to attain air quality  
14 standards in nonattainment areas under the federal Clean Air Act.  
15 g. By reducing the consumption of fossil fuels and reducing our  
16 dependence on foreign energy sources, thereby protecting our  
17 national security.  
18 h. By decreasing the likelihood of experiencing electric power  
19 blackouts or brownouts in cities, thereby increasing public safety in  
20 cities.

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

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

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

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

41 **"§ 160A-239.12. Designation of area within city.**

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

49 (b) The governing body shall make the determination under subsection (a) of this  
50 section by adopting a resolution indicating its intention to do so. The resolution of intention  
51 shall include a statement that the city proposes to make contractual assessment financing

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

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

17 **§ 160A-239.13. Financing of renewable energy and energy efficiency improvements to**  
18 **real property.**

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

27 **§ 160A-239.14. City official may authorize owner to purchase renewable energy and**  
28 **energy efficiency improvements.**

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

37 **§ 160A-239.15. Assessment report prepared by city official.**

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

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

- 1           d.     A method for setting requests from property owners for financing  
2           through loans repaid by contractual assessments in priority order in  
3           the event that requests appear likely to exceed the authorized  
4           maximum aggregate dollar amount of the contractual assessments.  
5           e.     Criteria for determining a property owner's eligibility to participate in  
6           the program, which may include a means to determine the property  
7           owner's credit worthiness.  
8       (4)    A plan for raising a capital amount required to pay for work performed  
9           pursuant to contractual assessments. The plan may include amounts to be  
10           advanced by the city through funds available to it from unrestricted revenue  
11           or grant funds. The plan shall include a statement of or method for  
12           determining the interest rate and time period during which contracting  
13           property owners would pay any assessment. The plan shall provide for any  
14           reserve funds. The plan shall provide for the apportionment of all or any  
15           portion of the costs incidental to the administration of the contractual  
16           assessment program among the consenting property owners and the city.  
17       (5)    A report on the results of the consultations with the county assessor  
18           concerning the additional fees, if any, that will be charged for collecting the  
19           proposed contractual assessments with the ad valorem taxes of the city on  
20           real property and a plan for financing the payment of those fees.

21    **"§ 160A-239.16. Notice of public hearing.**

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

28    **"§ 160A-239.17. Public hearing.**

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

41    **"§ 160A-239.18. Levy of contractual assessments for renewable energy and energy**  
42       **efficiency improvements to real property.**

43       Assessments levied pursuant to this Article, and the interest and any penalties thereon, shall  
44       constitute a lien against the lots and parcels of land on which they are made until they are paid.  
45       Article 10 of this Chapter applies to the levy and collection of assessments levied pursuant to  
46       this Article, insofar as those provisions are not in conflict with the provisions of this Article,  
47       including, but not limited to, the collection of assessments in the same manner and at the same  
48       time as the ad valorem taxes of the city on real property are payable and any penalties and  
49       remedies and lien priorities in the event of delinquency and default.

50    **"§ 160A-239.19. Recording of contractual assessments for renewable energy and energy**  
51       **efficiency improvements to real property.**



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

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

16 **"§ 153A-210.12. Designation of area within county.**

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

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

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

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

47 **"§ 153A-210.13. Financing of renewable energy and energy efficiency improvements to**  
48 **real property.**

49           A county may advance its unrestricted revenue to finance the program for the installation of  
50 distributed generation renewable energy sources or energy efficiency improvements that are  
51 permanently fixed to real property by extending loans to property owners for the purchase of

1 renewable energy and energy efficiency improvements under this Article, the principal and  
2 interest for which would be repaid by contractual assessments. The county shall set forth the  
3 process for financing the program and for entering into a loan agreement under this section in  
4 the county resolution forming the district under G.S. 153A-210.12. A county also may use  
5 grant monies it receives from the United States, the State, or any other source to finance the  
6 program.

7 **"§ 153A-210.14. County official may authorize owner to purchase renewable energy and**  
8 **energy efficiency improvements.**

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

17 **"§ 153A-210.15. Assessment report prepared by county official.**

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

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

51 **"§ 153A-210.16. Notice of public hearing.**

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

7 **"§ 153A-210.17. Public hearing.**

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

20 **"§ 153A-210.18. Levy of contractual assessments for renewable energy and energy**  
21 **efficiency improvements to real property.**

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

29 **"§ 153A-210.19. Recording of contractual assessments for renewable energy and energy**  
30 **efficiency improvements to real property.**

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

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