

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 629*

Short Title: NCSU Nonappropriated Capital Projects. (Public)

Sponsors: Senators Stein; Hunt, Jacumin, Malone, and Stevens.

Referred to: Finance.

March 17, 2009

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN
CAPITAL IMPROVEMENT PROJECTS OF NORTH CAROLINA STATE
UNIVERSITY.

The General Assembly of North Carolina enacts:

PART I: ENERGY CONSERVATION PROJECTS

SECTION 1.1. The purpose of this act is (i) to authorize the construction by North Carolina State University of the energy conservation projects listed in the act and (ii) to authorize the financing of these projects with funds available to the institution from gifts, grants, receipts, energy conservation bond indebtedness or other funds, or any combination of these funds, as permitted by law.

SECTION 1.2. The capital improvement projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1.1 of this act, are as follows:

North Carolina State University	\$57,400,000
Cates Utility Plant Installation of Multi-Fuel Boilers and a High-Efficiency Chiller	
Yarbrough Utility Plant Boiler Replacements	
Centennial Campus Substation Capacity & Redundancy Improvements	
Sullivan Substation Capacity & Redundancy Improvements	

SECTION 1.3. Pursuant to G.S. 116D-54(b), the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, energy conservation bonds of the Board of Governors for the purpose of paying all or part of the cost of acquiring, constructing, or providing for the projects authorized by Section 1.2 of this act. The maximum principal amount of bonds to be issued shall not exceed one hundred five percent (105%) the specified project costs in Section 1.2 of this act, of which five percent (5%) shall be allocated to related costs, including issuance expenses, funding of reserve funds, and capitalized interest.

PART II: STATUTORY AUTHORITY FOR ENERGY CONSERVATION BONDS

SECTION 2. Chapter 116D of the General Statutes is amended by adding a new Article to read:

"Chapter 116D.
"Article 5.



1 "Energy Conservation Bonds for Energy Savings Measures to the Facilities of North Carolina
2 State University.

3 **"§ 116D-50. Purpose.**

4 (a) It is the policy of this State to include in its plans for expansion and improvement of
5 State facilities plans for energy conservation as provided under Article 3B of Chapter 143. The
6 General Assembly has determined that the State shall take a leadership role in undertaking the
7 conservation of energy and other utilities in North Carolina, and this conservation will have a
8 beneficial effect on the State's overall supply of energy and other utilities.

9 (b) The general operating costs of the facilities of The University of North Carolina is
10 provided from appropriations by the General Assembly to The University of North Carolina on
11 behalf of its constituent institutions. In the event that the constituent institutions of The
12 University of North Carolina plan their capital improvements in a way to maximize energy
13 conservation, significant savings will result that can be utilized for other purposes by such
14 constituent institutions. It is in the interest of the people of North Carolina that innovative
15 programs be created that maximize energy conservation by the constituent institutions under
16 programs that encourage energy conservation and provide to constituent institutions with such
17 programs the resulting savings to carry out other University purposes.

18 (c) The purpose of this Article is to authorize the Board of Governors of The University
19 of North Carolina to issue energy conservation bonds, payable from utility appropriations and
20 other University funds, but with no pledge of taxes or the faith and credit of the State or any
21 agency or political subdivision of the State, to pay the cost, in whole or in part, of energy
22 conservation measures to the facilities of the University.

23 **"§ 116D-51. Definitions.**

24 The following definitions apply in this Article:

- 25 (1) Energy conservation bonds. – Bonds issued under this Article to finance the
26 cost of an energy conservation measure, which bonds are secured by and
27 payable from future utility appropriations in accordance with this Article.
- 28 (2) Energy conservation measure. – Defined in G.S.143-64.17.
- 29 (3) Energy consumption analysis. – Defined in G.S.143-64.11.
- 30 (4) Energy Office. – The State Energy Office of the Department of
31 Administration.
- 32 (5) Energy savings. – Defined in G.S.143-64.17.
- 33 (6) Energy savings analysis. – An engineering and economic report, containing
34 calculations of expected energy savings that are to result from the
35 installation of energy conservation measures on the campus of the Institution
36 as provided in this Article.
- 37 (7) Institution. – North Carolina State University.
- 38 (8) Obligated resources. – Defined in G.S.116D-22.
- 39 (9) Utility appropriations. – Funds appropriated to the Board of Governors or an
40 institution from the General Fund by the General Assembly from funds
41 derived from general revenues of the State for the purposes of paying the
42 cost of providing utility services for the Institution.

43 **"§ 116D-52. Credit and taxing power of State not pledged; statement on face of bonds.**

44 Energy conservation bonds issued under this Article shall not constitute a debt or liability of
45 the State or any political subdivision of the State or a pledge of the faith and credit of the State
46 or of any political subdivision of the State. Energy conservation bonds shall be secured by the
47 utility appropriations pledged to their payment as hereinafter provided and any other funds
48 pledged therefor as hereinafter provided. All of the energy conservation bonds shall contain on
49 their face a statement to the effect that neither the State nor the Board of Governors is obligated
50 to pay the bonds or the interest on the bonds except from the utility appropriations pledged for
51 payment or other pledged funds and that neither the faith and credit nor the taxing power of the

1 State or of any political subdivision or instrumentality of the State is pledged to the payment of
2 the principal of the interest on the bonds. The issuance of energy conservation bonds under this
3 Article does not directly, indirectly, or contingently obligate the State or any political
4 subdivision of the State to levy or to pledge any taxes for the bonds.

5 In addition to utility appropriations, to the extent permitted by the agreements with the
6 bondholders under the documents under which energy conservation bonds are issued and under
7 which the Board's other bonds for improvements at the institution are issued, energy
8 conservation bonds may also be secured by a pledge of, or other agreement to apply, obligated
9 resources of the Board with respect to the Institution upon which the energy conservation
10 measure being financed is to be located. The bond documents pursuant to which the energy
11 conservation bonds are issued may provide that such pledge or other agreement to apply
12 obligated resources may be subordinated to pledge or agreements securing other bonds of the
13 Board issued pursuant to Article 3 of Chapter 116D or otherwise.

14 **"§ 116D-53. General powers of Board of Governors.**

15 The Board of Governors is authorized, subject to the requirements of this Article, to do all
16 of the following:

- 17 (1) Determine the location and character of any energy conservation measure, to
18 acquire, construct, and provide the project, and to maintain, repair, operate,
19 and enter into contracts for the management, lease, use, or operation of all or
20 any portion of any energy conservation measure and any existing facilities.
- 21 (2) Issue energy conservation bonds to pay all or any part of the cost of an
22 energy conservation measure, and to fund or refund any bonds previously
23 issued by the Board of Governors to finance facilities designated as an
24 energy conservation measure.
- 25 (3) Enter into all contracts and agreements necessary or incidental to the
26 performance of its duties and the execution of its powers under this Article.
- 27 (4) Do all acts and things necessary or convenient to carry out the powers
28 granted by this Article.

29 **"§ 116D-54. Issuance of energy conservation bonds and bond anticipation notes.**

30 (a) Authority. – The Board of Governors may issue, subject to the approval of the
31 Director of the Budget, at one time or from time to time, energy conservation bonds of the
32 Board of Governors for the purpose of paying all or any part of the cost of acquiring,
33 constructing, or providing an energy conservation measure. Before issuing energy conservation
34 bonds, the Board of Governors shall first adopt a resolution (i) setting forth the energy
35 conservation measure being financed and (ii) designating the utility appropriations that will
36 secure and be the source of payment of the energy conservation bonds to be issued. The Board
37 of Governors shall not issue any energy conservation bonds unless the Board of Governors
38 finds that sufficient utility appropriations are reasonably expected to be available to pay the
39 principal and interest on the energy conservation bonds proposed to be issued.

40 (b) Approval Required. – The Board of Governors shall not issue energy conservation
41 bonds under this Article until the effective date of legislation enacted by the General Assembly
42 authorizing the undertaking of the energy conservation measure to be financed and fixing the
43 maximum aggregate principal amount of energy conservation bonds that shall be issued for that
44 purpose.

45 Except as provided in this Article, energy conservation measures may be undertaken,
46 energy conservation bonds may be issued, and other powers vested in the Board of Governors
47 under this Article may be exercised by the Board without obtaining the consent of any
48 department, division, commission, board, bureau, or agency of the State and without any other
49 proceedings or the happening of any other conditions or things other than those proceedings,
50 conditions, or things which are specifically required by this Article.

1 (c) Term. – The energy conservation bonds of each issue shall be dated, shall mature at
2 any times not exceeding 30 years from their dates, shall bear interest at any rates as may be
3 determined by the Board of Governors, and may be redeemable before maturity at the option of
4 the Board, at any prices and under any terms and conditions as may be fixed by the Board prior
5 to the issuance of the energy conservation bonds. The Board of Governors shall determine the
6 form and manner of execution of the energy conservation bonds and shall fix the
7 denominations of the energy conservation bonds and the places of payment of principal and
8 interest, which may be at any bank or trust company within or without the State.
9 Notwithstanding any of the other provisions of this Article or any recitals in any energy
10 conservation bonds issued under the provisions of this Article, all energy conservation bonds
11 shall be negotiable instruments under the laws of this State, subject only to the provisions for
12 registration in a resolution authorizing the issuance of the energy conservation bonds or a trust
13 agreement securing the bonds. The Board of Governors may sell the energy conservation bonds
14 in any manner, at public or private sale, and for any price, as it may determine to be for its best
15 interests.

16 **"§ 116D-55. Trust agreement; money received deemed trust funds; insurance; remedies.**

17 (a) Trust Agreement Securing Bonds. – In the discretion of the Board of Governors and
18 subject to the approval of the Director of the Budget, any energy conservation bonds issued
19 under this Article may be secured by a trust agreement by and between the Board of Governors
20 and a corporate trustee, which may be any trust company or bank having the powers of a trust
21 company within or without the State. The trust agreement or the resolution providing for the
22 issuance of energy conservation bonds may pledge or assign the utility appropriations
23 designated as security for the energy conservation bonds, but shall not convey or mortgage any
24 property of the institution. The trust agreement or resolution providing for the issuance of
25 energy conservation bonds may contain provisions for protecting and enforcing the rights and
26 remedies of the holders of the energy conservation bonds that are reasonable and proper and
27 not in violation of law, including covenants setting forth the duties of the Board of Governors
28 in relation to the acquisition, construction, or provision of any of the charging and collecting of
29 any rates, fees, or charges that have been designated as utility appropriations, the maintenance,
30 repair, operation, and insurance of any property of the institution, and the custody,
31 safeguarding, and application of all moneys. It shall be lawful for any bank or trust company
32 incorporated under the laws of the State which may act as depositary of the proceeds of energy
33 conservation bonds or funds securing energy conservation bonds to furnish any indemnifying
34 bonds or to pledge any securities as may be required by the Board of Governors. A trust
35 agreement or resolution may set forth the rights and remedies of the holders of the energy
36 conservation bonds and the rights, remedies, and immunities of the trustee or trustees, if any,
37 and may restrict the individual right of action by the holders. In addition to the foregoing, a
38 trust agreement or resolution may contain other provisions the Board of Governors considers
39 reasonable and proper for the security of the holders. All expenses incurred in carrying out the
40 provisions of the trust agreement or resolution may be treated as a part of the cost of the energy
41 conservation measures for which the energy conservation bonds are issued or as an expense of
42 operation of the energy conservation measure.

43 (b) Trust Funds. – All moneys received pursuant to the authority of this Article,
44 whether as proceeds from the sale of bonds, or as utility appropriations, are trust funds to be
45 held and applied solely as provided in this Article. The Board of Governors may provide for the
46 payment of all or part of the proceeds of the sale of the energy conservation bonds and the
47 utility appropriations to any officer, board, or depositary that it may designate for their custody,
48 and may provide for their method of disbursement, with any safeguards and restrictions it may
49 determine. Any officer with whom, or any bank or trust company with which, moneys are
50 deposited shall act as trustee of the moneys and shall hold and apply them for the purposes of

1 this Article, subject to any requirements provided in this Article and in the resolution or trust
2 agreement, authorizing or securing the energy conservation bonds.

3 **"§ 116D-56. Energy savings analysis; future utility appropriations.**

4 (a) Energy Savings Analysis. – Prior to the financing and installation of any energy
5 conservation measure, an energy savings analysis shall be performed by a third party selected
6 by the Institution to validate the economic analysis supporting the financing of the
7 improvements. The energy savings analysis shall be submitted to the University of North
8 Carolina General Administration and to the State Energy Office. No energy conservation
9 measure shall be undertaken or financed hereunder unless the Energy Savings Analysis projects
10 sufficient energy savings to pay the debt service on the bonds to be issued to finance the
11 improvements. The Energy Savings Analysis shall include an energy consumption analysis to
12 develop a baseline of all utilities energy consumption and costs for the Institution on the
13 assumption that the energy conservation measure was not undertaken.

14 (b) Annual Measurement. – It is the intention of the General Assembly that
15 appropriations be made to the Board of Governors on behalf of the Institution of the amount
16 that would have been appropriated to the Institution to provide for the costs of utilities for the
17 Institution had the energy conservation measure not been undertaken. The Institution for which
18 an energy conservation measure is financed hereunder shall retain a third party to perform an
19 annual measurement and verification of energy savings resulting from the energy conservation
20 measure as compared to the energy costs that would have resulted from the baseline described
21 in subsection (a) of this section.

22 The third party shall provide an annual reconciliation statement based upon the results of
23 the measurement and verification review. The statement shall disclose any shortfalls or surplus
24 between estimated energy usage and operational savings specified in the life cycle cost analysis
25 and actual, not stipulated, energy and operational savings incurred during a given year.

26 In the event of a force majeure, including worldwide fuel shortage, war, terrorism, riot, and
27 forces beyond the State's control, a ceiling rate on fuel escalations will be imposed and applied
28 to the annual calculation, with the fuel escalation ceiling rate to be sixty percent (60%) above
29 baseline rate based on National Institutes of Standards and Technology's (NIST) published
30 "Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis – April 2007" annual
31 supplement to NIST handbook 135 and NBS Special Publication 709. Energy rates shall not
32 devalue in the event of any rate decrease for the purposes of calculating wages. Degree days
33 shall be used as a correction factor to determine a relationship between baseline and current
34 energy amounts. Any future utility load and demand of added projects to the campus will be
35 factored into the baseline energy consumption analysis based on square footage and space type.

36 The Institution shall be responsible for any shortfall in the energy and operational savings
37 after the total year savings have been determined. The shortfall shall be paid by the Institution.
38 Any surplus in avoided costs will be retained by the Institution. The Institution shall not be held
39 responsible for losses due to natural disaster in the calculations for energy savings.

40 (c) Retained Savings. – Following the payment of the bonds issued pursuant to this act,
41 the Institution shall retain any additional savings to fund additional energy conservation
42 projects. Notwithstanding the foregoing, the appropriation of utility appropriations during any
43 future fiscal biennium or fiscal year shall be limited to funds appropriated for that purpose by
44 the General Assembly in its discretion. No provision of this Article and no financing contract or
45 any other related documentation shall be construed or interpreted as creating a pledge of the
46 faith and credit of the State or any agency, department, or commission of the State within the
47 meaning of any constitutional debt limitation.

48 **"§ 116D-57. Additional and alternative method.**

49 This Article provides an additional and alternative method for the doing of the things
50 authorized and is supplemental and additional to powers conferred by other laws, and is not in
51 derogation of or repealing any powers now existing under any other law, whether general,

1 special, or local. The issuance of energy conservation bonds or refunding bonds under this
2 Article, however, need not comply with the requirements of any other law applicable to the
3 issuance of bonds."

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