

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**HOUSE BILL 2639**

Short Title: NCSU Nonappropriated Capital Projects. (Public)

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Sponsors: Representatives Tolson; Faison and Hughes.

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Referred to: Appropriations.

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May 28, 2008

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF  
2 CERTAIN CAPITAL IMPROVEMENT PROJECTS OF NORTH CAROLINA  
3 STATE UNIVERSITY.  
4

5 The General Assembly of North Carolina enacts:

6  
7 **PART I: ENERGY CONSERVATION PROJECTS**  
8

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

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

<b>North Carolina State University</b>	<b>\$53,300,000</b>
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Cates Utility Plant Installation of Multi-Fuel Boilers and a High-Efficiency Chiller	
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Yarbrough Utility Plant Boiler Replacements	
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Centennial Campus Substation Capacity & Redundancy Improvements	
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Sullivan Substation Capacity & Redundancy Improvements	
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22 **SECTION 1.3.** Pursuant to G.S. 116D-54(b), the Board of Governors may  
23 issue, subject to the approval of the Director of the Budget, at one time or from time to  
24 time, energy conservation bonds of the Board of Governors for the purpose of paying all  
25 or part of the cost of acquiring, constructing, or providing for the projects authorized by  
26 Section 1.2 of this act. The maximum principal amount of bonds to be issued shall not  
27 exceed one hundred five percent (105%) the specified project costs in Section 1.2 of this  
28

1 act, of which five percent (5%) shall be allocated to related costs, including issuance  
2 expenses, funding of reserve funds, and capitalized interest.

3  
4 **PART II: STATUTORY AUTHORITY FOR ENERGY CONSERVATION**  
5 **BONDS**

6  
7 **SECTION 2.** Chapter 116D of the General Statutes is amended by adding a  
8 new Article to read:

9 "Chapter 116D.

10 "Article 5.

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

13 **"§ 116D-50. Purpose.**

14 (a) It is the policy of this State to include in its plans for expansion and  
15 improvement of State facilities plans for energy conservation as provided under Article  
16 3B of Chapter 143. The General Assembly has determined that the State shall take a  
17 leadership role in undertaking the conservation of energy and other utilities in North  
18 Carolina, and this conservation will have a beneficial effect on the State's overall supply  
19 of energy and other utilities.

20 (b) The general operating costs of the facilities of The University of North  
21 Carolina is provided from appropriations by the General Assembly to The University of  
22 North Carolina on behalf of its constituent institutions. In the event that the constituent  
23 institutions of the University of North Carolina plan their capital improvements in a way  
24 to maximize energy conservation, significant savings will result that can be utilized for  
25 other purposes by such constituent institutions. It is in the interest of the people of North  
26 Carolina that innovative programs be created that maximize energy conservation by the  
27 constituent institutions under programs that encourage energy conservation and provide  
28 to constituent institutions with such programs the resulting savings to carry out other  
29 University purposes.

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

35 **"§ 116D-51. Definitions.**

36 The following definitions apply in this Article:

- 37 (1) Energy conservation bonds. – Bonds issued under this Article to  
38 finance the cost of an energy conservation measure, which bonds are  
39 secured by and payable from future utility appropriations in  
40 accordance with this Article.
- 41 (2) Energy conservation measure. – Defined in G.S.143-64.17.
- 42 (3) Energy consumption analysis. – Defined in G.S.143-64.11.
- 43 (4) Energy Office. – The State Energy Office of the Department of  
44 Administration.

1           (5) Energy savings. – Defined in G.S.143-64.17.

2           (6) Energy savings analysis. – An engineering and economic report,  
3           containing calculations of expected energy savings that are to result  
4           from the installation of energy conservation measures on the campus  
5           of the Institution as provided in this Article.

6           (7) Institution. – North Carolina State University.

7           (8) Obligated resources. – Defined in G.S.116D-22.

8           (9) Utility appropriations. – Funds appropriated to the Board of Governors  
9           or an institution from the General Fund by the General Assembly from  
10           funds derived from general revenues of the State for the purposes of  
11           paying the cost of providing utility services for the Institution.

12 **"§ 116D-52. Credit and taxing power of State not pledged; statement on face of**  
13 **bonds.**

14       Energy conservation bonds issued under this Article shall not constitute a debt or  
15 liability of the State or any political subdivision of the State or a pledge of the faith and  
16 credit of the State or of any political subdivision of the State. Energy conservation  
17 bonds shall be secured by the utility appropriations pledged to their payment as  
18 hereinafter provided and any other funds pledged therefor as hereinafter provided. All  
19 of the energy conservation bonds shall contain on their face a statement to the effect that  
20 neither the State nor the Board of Governors is obligated to pay the bonds or the interest  
21 on the bonds except from the utility appropriations pledged for payment or other  
22 pledged funds and that neither the faith and credit nor the taxing power of the State or of  
23 any political subdivision or instrumentality of the State is pledged to the payment of the  
24 principal of or the interest on the bonds. The issuance of energy conservation bonds  
25 under this Article does not directly or indirectly or contingently obligate the State or any  
26 political subdivision of the State to levy or to pledge any taxes for the bonds.

27       In addition to utility appropriations, to the extent permitted by the agreements with  
28 the bondholders under the documents under which energy conservation bonds are issued  
29 and under which the Board's other bonds for improvements at the institution are issued,  
30 energy conservation bonds may also be secured by a pledge of, or other agreement to  
31 apply, obligated resources of the Board with respect to the Institution upon which the  
32 energy conservation measure being financed is to be located. The bond documents  
33 pursuant to which the energy conservation bonds are issued may provide that such  
34 pledge or other agreement to apply obligated resources may be subordinated to pledge  
35 or agreements securing other bonds of the Board issued pursuant to Article 3 of Chapter  
36 116D or otherwise.

37 **"§ 116D-53. General powers of Board of Governors.**

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

40           (1) Determine the location and character of any energy conservation  
41 measure, to acquire, construct, and provide the project, and to  
42 maintain, repair, operate, and enter into contracts for the management,  
43 lease, use, or operation of all or any portion of any energy  
44 conservation measure and any existing facilities.

- 1           (2) Issue energy conservation bonds to pay all or any part of the cost of an  
2 energy conservation measure, and to fund or refund any bonds  
3 previously issued by the Board of Governors to finance facilities  
4 designated as an energy conservation measure.
- 5           (3) Enter into all contracts and agreements necessary or incidental to the  
6 performance of its duties and the execution of its powers under this  
7 Article.
- 8           (4) Do all acts and things necessary or convenient to carry out the powers  
9 granted by this Article.

10 **§ 116D-54. Issuance of energy conservation bonds and bond anticipation notes.**

11       (a) Authority. – The Board of Governors may issue, subject to the approval of  
12 the Director of the Budget, at one time or from time to time, energy conservation bonds  
13 of the Board of Governors for the purpose of paying all or any part of the cost of  
14 acquiring, constructing, or providing an energy conservation measure. Before issuing  
15 energy conservation bonds, the Board of Governors shall first adopt a resolution (i)  
16 setting forth the energy conservation measure being financed and (ii) designating the  
17 utility appropriations that will secure and be the source of payment of the energy  
18 conservation bonds to be issued. The Board of Governors shall not issue any energy  
19 conservation bonds unless the Board of Governors finds that sufficient utility  
20 appropriations are reasonably expected to be available to pay the principal and interest  
21 on the energy conservation bonds proposed to be issued.

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

27       Except as provided in this Article, energy conservation measures may be  
28 undertaken, energy conservation bonds may be issued, and other powers vested in the  
29 Board of Governors under this Article may be exercised by the Board without obtaining  
30 the consent of any department, division, commission, board, bureau, or agency of the  
31 State and without any other proceedings or the happening of any other conditions or  
32 things other than those proceedings, conditions, or things which are specifically  
33 required by this Article.

34       (c) Term. – The energy conservation bonds of each issue shall be dated, shall  
35 mature at any times not exceeding 30 years from their dates, shall bear interest at any  
36 rates as may be determined by the Board of Governors, and may be redeemable before  
37 maturity at the option of the Board, at any prices and under any terms and conditions as  
38 may be fixed by the Board prior to the issuance of the energy conservation bonds. The  
39 Board of Governors shall determine the form and manner of execution of the energy  
40 conservation bonds and shall fix the denominations of the energy conservation bonds  
41 and the places of payment of principal and interest, which may be at any bank or trust  
42 company within or without the State. Notwithstanding any of the other provisions of  
43 this Article or any recitals in any energy conservation bonds issued under the provisions  
44 of this Article, all energy conservation bonds shall be negotiable instruments under the

1 laws of this State, subject only to the provisions for registration in a resolution  
2 authorizing the issuance of the energy conservation bonds or a trust agreement securing  
3 the bonds. The Board of Governors may sell the energy conservation bonds in any  
4 manner, at public or private sale, and for any price, as it may determine to be for its best  
5 interests.

6 **"§ 116D-55. Trust agreement; money received deemed trust funds; insurance;**  
7 **remedies.**

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

37 (b) Trust Funds. – All moneys received pursuant to the authority of this Article,  
38 whether as proceeds from the sale of bonds, or as utility appropriations, are trust funds  
39 to be held and applied solely as provided in this Article. The Board of Governors may  
40 provide for the payment of all or part of the proceeds of the sale of the energy  
41 conservation bonds and the utility appropriations to any officer, board, or depository  
42 that it may designate for their custody, and may provide for their method of  
43 disbursement, with any safeguards and restrictions it may determine. Any officer with  
44 whom, or any bank or trust company with which, moneys are deposited shall act as

1 trustee of the moneys and shall hold and apply them for the purposes of this Article,  
2 subject to any requirements provided in this Article and in the resolution or trust  
3 agreement, authorizing or securing the energy conservation bonds.

4 **"§ 116D-56. Energy savings analysis; future utility appropriations.**

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

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

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

29 In the event of a force majeure, including worldwide fuel shortage, war, terrorism,  
30 riot, and forces beyond the State's control, a ceiling rate on fuel escalations will be  
31 imposed and applied to the annual calculation, with the fuel escalation ceiling rate to be  
32 sixty percent (60%) above baseline rate based on National Institutes of Standards and  
33 Technology's (NIST) published "Energy Price Indices and Discount Factors for  
34 Life-Cycle Cost Analysis – April 2007" annual supplement to NIST handbook 135 and  
35 NBS Special Publication 709.

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

41 (c) Retained Savings. – Following the payment of the bonds issued pursuant to  
42 this act, the Institution shall retain any additional savings to fund additional energy  
43 conservation projects. Notwithstanding the foregoing, the appropriation of utility  
44 appropriations during any future fiscal biennium or fiscal year shall be limited to funds

1 appropriated for that purpose by the General Assembly in its discretion. No provision of  
2 this Article and no financing contract or any other related documentation shall be  
3 construed or interpreted as creating a pledge of the faith and credit of the State or any  
4 agency, department, or commission of the State within the meaning of any  
5 constitutional debt limitation.

6 **"§ 116D-57. Additional and alternative method.**

7 This Article provides an additional and alternative method for the doing of the things  
8 authorized and is supplemental and additional to powers conferred by other laws, and is  
9 not in derogation of or repealing any powers now existing under any other law, whether  
10 general, special, or local. The issuance of energy conservation bonds or refunding bonds  
11 under this Article, however, need not comply with the requirements of any other law  
12 applicable to the issuance of bonds."

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