

By the Committee on Community Affairs; and Senator Bennett

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1                   A bill to be entitled  
2           An act relating to energy improvement districts;  
3           creating s. 163.08, F.S.; providing for supplemental  
4           authority to local governments regarding improvements  
5           to real property; providing legislative findings and  
6           intent; defining "local government," "qualifying  
7           improvement," "energy conservation and efficiency  
8           improvement," "renewable-energy improvement," and  
9           "wind-resistance improvement"; authorizing a local  
10          government to levy a non-ad valorem assessment to fund  
11          a qualifying improvement; authorizing a property owner  
12          to enter into a financing agreement with a local  
13          government to finance a qualifying improvement;  
14          authorizing a local government to collect for such  
15          purpose through a non-ad valorem assessment; providing  
16          exceptions; providing for discontinuance of utility  
17          service under certain circumstances if the financing  
18          agreement provides for repayment through a utility  
19          bill; authorizing a local government to enter into a  
20          partnership with one or more local governments for the  
21          purpose of providing and financing qualifying  
22          improvements; authorizing a for-profit entity or a  
23          not-for-profit organization to administer a qualifying  
24          improvement program on behalf of and at the discretion  
25          of the local government; authorizing a local  
26          government to incur debt payable from revenues  
27          received from the improved property; requiring that a  
28          local government verify past payment delinquencies and  
29          involuntary liens on the property; requiring that a

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30       qualifying improvement be affixed to an existing  
31       building or facility on the property and be performed  
32       by a properly certified or registered contractor;  
33       limiting the total amount of a non-ad valorem  
34       assessment or a municipal or county lien; providing  
35       exceptions; requiring that a property owner provide  
36       certain parties with notice of intent to enter into a  
37       financing agreement, the maximum principal amount to  
38       be financed, and the maximum annual assessment needed  
39       to repay that amount; prohibiting acceleration of a  
40       mortgage under certain circumstances; providing that  
41       certain provisions of state law do not limit or  
42       prohibit any local government from exercising certain  
43       authority; providing for statutory construction  
44       regarding a local government's home-rule authority;  
45       providing an effective date.

46  
47       Be It Enacted by the Legislature of the State of Florida:

48  
49       Section 1. Section 163.08, Florida Statutes, is created to  
50       read:

51       163.08 Supplemental authority regarding improvements to  
52       real property.-

53       (1) (a) The Legislature affirms its previous amendments to  
54       the energy goal of the state comprehensive plan, which provided,  
55       in part, that Florida shall reduce its energy requirements  
56       through enhanced conservation and efficiency measures in all  
57       end-use sectors and shall reduce atmospheric carbon dioxide by  
58       promoting an increased use of renewable-energy resources. The

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59 Legislature also affirms its previous declaration that it is the  
60 public policy of this state to play a leading role in developing  
61 and instituting energy management programs aimed at promoting  
62 energy conservation, energy security, and reduction of  
63 greenhouse gases. In addition to establishing policies to  
64 promote the use of renewable energy, the Legislature finds that  
65 it must continue to provide for a schedule of increases in  
66 energy performance of buildings subject to the Florida Energy  
67 Efficiency Code for Building Construction. The Legislature  
68 further finds that it must continue to adopt new energy  
69 conservation and greenhouse gas reduction comprehensive planning  
70 requirements for local governments. The Legislature acknowledges  
71 that in the General Election of 2008, the voters of this state  
72 approved a constitutional amendment authorizing the Legislature,  
73 by general law, to prohibit consideration of any change or  
74 improvement made for the purpose of improving the property's  
75 resistance to wind damage or the installation of a renewable-  
76 energy-source device in the determination of the assessed value  
77 of real property used for residential purposes.

78 (b) All energy-consuming improved properties not using  
79 energy-conservation strategies contribute to the burden  
80 affecting all improved property resulting from fossil fuel  
81 energy production. Improved property that has been retrofitted  
82 with energy-related qualifying improvements receives the special  
83 benefit of alleviating the property's burden from energy  
84 consumption. All improved properties not protected from wind  
85 damage by wind-resistance improvements contribute to the burden  
86 affecting all improved property resulting from potential wind  
87 damage. Improved property that has been retrofitted with wind-

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88 resistance qualifying improvements receives the special benefit  
89 of reducing the property's burden from potential wind damage.  
90 Further, the installation and operation of qualifying  
91 improvements not only benefit the affected properties for which  
92 the improvements are made, but also assist in fulfilling the  
93 goals of the state's energy and hurricane mitigation policies.  
94 To make qualifying improvements more affordable and assist  
95 property owners who wish to undertake them, there is a  
96 compelling state interest in enabling property owners, on a  
97 voluntary basis, to finance such improvements with local  
98 government assistance.

99 (c) The Legislature finds that the actions authorized under  
100 this section, including the financing therein of qualifying  
101 improvements through the execution of financing agreements and  
102 the related imposition of voluntary assessments or charges, are  
103 reasonable and necessary to serve and achieve a compelling state  
104 interest and for the prosperity and welfare of the state and its  
105 property owners and inhabitants.

106 (2) For purposes of this section, the term:

107 (a) "Local government" means a county, a municipality, or a  
108 special district.

109 (b) "Qualifying improvement" includes any of the following:

110 1. "Energy conservation and efficiency improvement," which  
111 means a measure to reduce consumption, through conservation or  
112 more efficient use, of electricity, natural gas, propane, or  
113 other forms of energy on the property, including, but not  
114 limited to, air sealing, installation of insulation,  
115 installation of energy-efficient heating, cooling, or  
116 ventilation systems, building modifications to increase the use

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117 of daylighting, replacement of windows, installation of energy  
118 controls or energy-recovery systems, and installation of  
119 efficient lighting equipment, provided that, to be covered by an  
120 agreement with a property owner and financed under this section,  
121 such improvement must be affixed to a building or facility that  
122 is part of the property.

123 2. "Renewable-energy improvement," which means the  
124 installation of any system whereby electrical, mechanical, or  
125 thermal energy is produced from a method that uses one or more  
126 of the following fuels or energy sources: hydrogen, solar  
127 energy, geothermal energy, bioenergy, or wind energy.

128 3. "Wind-resistance improvement," which includes, but is  
129 not limited to:

130 a. Improving the strength of the roof deck attachment;

131 b. Creating a secondary water barrier to prevent water  
132 intrusion;

133 c. Installing wind-resistant shingles;

134 d. Installing gable-end bracing;

135 e. Reinforcing roof-to-wall connections;

136 f. Installing storm shutters; and

137 g. Installing opening protections.

138 (3) A local government may levy a non-ad valorem assessment  
139 to fund a qualifying improvement.

140 (4) Subject to local government ordinance or resolution, a  
141 property owner may apply to the local government for funding to  
142 finance a qualifying improvement and enter into a financing  
143 agreement with the local government. Costs incurred by the local  
144 government for such purpose may be collected as a non-ad valorem  
145 assessment or a municipal or county lien, or may be collected

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146 pursuant to any other lawful method.

147 (a) A non-ad valorem assessment shall be collected pursuant  
148 s. 197.3632. However, the notice and adoption requirements of s.  
149 197.3632(4) do not apply if the provisions of this section are  
150 used and complied with, and the initial resolution, publication  
151 of notice, and mailed notices to the property appraiser, tax  
152 collector, and Department of Revenue required by s.  
153 197.3632(3) (a) are provided on or before August 15 in  
154 conjunction with any non-ad valorem assessment authorized by  
155 this section if the property appraiser, tax collector, and local  
156 government agree.

157 (b) If the financing agreement provides for repayment  
158 through a surcharge on a utility or other municipal service bill  
159 in the form of a municipal lien, the utility provider may  
160 discontinue the delivery of all utility service if the surcharge  
161 is not paid. However, the financing agreement must set forth the  
162 terms and costs of such discontinuance, including the period  
163 after which discontinuance will be imposed.

164 (5) Pursuant to this section, other applicable law, or its  
165 home rule power, a local government may enter into a partnership  
166 with one or more local governments for the purpose of providing  
167 and financing qualifying improvements.

168 (6) A qualifying improvement program may be administered by  
169 a for-profit entity or a not-for-profit organization on behalf  
170 of and at the discretion of the local government.

171 (7) A local government may incur debt for the purpose of  
172 providing such improvements, payable from revenues received from  
173 the improved property or any other available revenue source as  
174 authorized by law.

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175 (8) A local government may enter into a financing agreement  
176 only with the owner of record of the affected property.

177 (9) Before entering into a financing agreement, the local  
178 government shall reasonably verify that all property taxes and  
179 any other assessments levied on the same bill as property taxes  
180 have been paid and have not been delinquent for the past 3 years  
181 or the property owner's period of ownership, whichever is less;  
182 that there are no involuntary liens such as construction liens  
183 on the property; that no notices of default or other evidence of  
184 property-based debt delinquency have been recorded during the  
185 past 3 years or the property owner's period of ownership,  
186 whichever is less; and that the property owner is current on all  
187 mortgage debt on the property.

188 (10) A qualifying improvement shall be affixed to an  
189 existing building or facility that is part of the property and  
190 shall constitute an improvement to the building or facility or a  
191 fixture thereto. An agreement between a local government and a  
192 qualifying property owner may not cover projects in buildings or  
193 facilities under new construction or construction for which a  
194 certificate of occupancy or similar evidence of substantial  
195 completion of new construction or improvement has not been  
196 issued.

197 (11) Any work requiring a license under any applicable law  
198 to make a qualifying improvement shall be performed by a  
199 contractor properly certified or registered pursuant to part I  
200 or part II of chapter 489.

201 (12) Without the consent of the holders or loan servicers  
202 of any mortgage encumbering or otherwise secured by the  
203 property, the total amount of any non-ad valorem assessment or

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204 municipal or county lien for a property under this section may  
205 not exceed 20 percent of the just value of the property as  
206 determined by the county property appraiser.

207 (a) Notwithstanding any other provision of law, a non-ad  
208 valorem assessment or municipal or county lien for a qualifying  
209 improvement defined in subparagraph (2)(b)1. or 2. which is  
210 supported by an energy audit is not subject to the limits in  
211 this subsection if the audit demonstrates that the annual energy  
212 savings from the qualified improvement equals or exceeds the  
213 annual repayment amount of the non-ad valorem assessment or  
214 municipal or county lien.

215 (b) A local government may adopt alternate parameters to  
216 those specified in this subsection to conform to local needs and  
217 conditions after conducting a public hearing resulting in a  
218 finding of the need for such changes due to local needs and  
219 conditions.

220 (13) At least 30 days before entering into a financing  
221 agreement, the property owner shall provide to the holders or  
222 loan servicers of any existing mortgages encumbering or  
223 otherwise secured by the property notice of intent to enter into  
224 a financing agreement, together with the maximum principal  
225 amount to be financed and the maximum annual assessment  
226 necessary to repay such amount. A provision of any agreement  
227 between a mortgagee or other lienholder and a property owner or  
228 otherwise now or hereafter binding upon a property owner  
229 allowing for acceleration of payment of the mortgage, note, or  
230 lien or other unilateral modification solely as a result of  
231 entering into a financing agreement, as provided for in this  
232 section, is not enforceable. This subsection does not limit the



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233 authority of the holder or loan servicer to increase the  
234 required monthly escrow by an amount necessary to annually pay  
235 the qualifying improvement assessment.

236 (14) A provision of any agreement between a local  
237 government and a public or private power or energy provider, or  
238 other utility provider, may not limit or prohibit any local  
239 government from exercising its authority under this section.

240 (15) This section shall be construed to be additional and  
241 supplemental to county and municipal home-rule authority and not  
242 in derogation thereof or a limitation thereon.

243 Section 2. This act shall take effect July 1, 2010.