

1 A bill to be entitled
2 An act relating to improvements to real property;
3 amending s. 163.08, F.S.; providing definitions;
4 revising the term "qualifying improvement";
5 specifying information that must be sought before a
6 financing agreement may be approved; specifying that
7 the failure of a property owner to disclose specified
8 information does not invalidate a financing
9 agreement; specifying information that must be
10 verified for residential properties regarding a
11 property owner's ability to pay the annual
12 assessment; specifying how the fair market value on
13 the property on which a qualifying improvement will
14 be placed is to be derived; requiring a program
15 administrator to orally provide specified information
16 to a residential property owner before executing a
17 financing agreement; requiring certain local
18 governments to develop a written disclosure form
19 which contains specified information; specifying
20 situations in which a contract to sell or install a
21 qualifying improvement on a residential property is
22 unenforceable; providing procedures for returning or
23 restoring residential property in specified
24 situations in which a contract is unenforceable;
25 specifying practices in which a program administrator

26 may not engage; providing exceptions; specifying
 27 actions that a contractor may not engage in regarding
 28 financing agreements; requiring a program
 29 administrator to make publicly available specified
 30 information regarding qualifying improvements;
 31 authorizing a program administrator to include
 32 additional products under specified conditions;
 33 requiring the qualifying improvements program to post
 34 an annual report on its website; specifying items to
 35 be included in such report; providing an effective
 36 date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Subsections (7), (10), (11), (12), (13), (14),
 41 (15), and (16), of section 163.08, Florida Statutes, are
 42 renumbered as subsections (17), (19), (20), (21), (22), (23),
 43 (24), and (26), respectively, present subsection (8) is
 44 renumbered as subsection (18) and amended, present subsections
 45 (2) and (9), are amended, and new subsections (7) through (16)
 46 and (25) are added to that section, to read:

47 163.08 Supplemental authority for improvements to real
 48 property.—

49 (2) As used in this section, the term:

50 (a) "Facility" means any portion of a building,

51 structure, or site improvement located on a site as defined in
 52 Section 202 of the 2017 Florida Building Code.

53 (b) "Local government" means a county, a municipality, a
 54 dependent special district as defined in s. 189.012, or a
 55 separate legal entity created pursuant to s. 163.01(7).

56 (c) "Non-residential property" means any property type
 57 that is not a residential property.

58 (d) "Program administrator" means a for-profit or not-
 59 for-profit entity which administers a qualifying improvement
 60 program on behalf and at the discretion of a local government.

61 (e) ~~(b)~~ "Qualifying improvement" includes any:

62 1. Energy conservation and efficiency improvement, which
 63 is a measure to reduce consumption through conservation or a
 64 more efficient use of electricity, natural gas, propane, or
 65 other forms of energy on the property, including, but not
 66 limited to, air sealing; installation of insulation;
 67 installation of energy-efficient heating, cooling, or
 68 ventilation systems; building modifications to increase the use
 69 of daylight; replacement of windows; installation of energy
 70 controls or energy recovery systems; installation of electric
 71 vehicle charging equipment; and installation of efficient
 72 lighting equipment.

73 2. Renewable energy improvement, which is the
 74 installation of any system in which the electrical, mechanical,
 75 or thermal energy is produced from a method that uses one or

76 more of the following fuels or energy sources: hydrogen, solar
 77 energy, geothermal energy, bioenergy, and wind energy.

78 3. Wind resistance improvement, which includes the
 79 products and installation for, ~~but is not limited to:~~

- 80 a. Improving the strength of the roof deck attachment;
- 81 b. Creating a secondary water barrier to prevent water
- 82 intrusion;
- 83 c. ~~Installing~~ Wind-resistant shingles;
- 84 d. ~~Installing~~ Gable-end bracing;
- 85 e. Reinforcing Roof-to-wall connections;
- 86 f. ~~Installing~~ Storm shutters; or
- 87 g. ~~Installing~~ opening protections.

88 (f) "Qualifying improvements program" means a program
 89 that includes financing and administration activities
 90 undertaken by a program administrator or other entity for
 91 property owners to purchase and install qualifying improvements
 92 on a building or facility.

93 (g) "Residential property" means real estate on which any
 94 of the following is located:

95 1. One single-family residential unit or one multifamily
 96 structure containing one to four residential units;

97 2. Single-family residential units such as condominiums,
 98 townhouses, timeshares, mobile homes, or houses in a
 99 subdivision that may be legally sold, leased, or otherwise
 100 conveyed on a unit-by-unit basis, regardless of whether the

101 units are a part of a larger building or parcel containing more
102 than four residential units.

103 (7) A financing agreement may not be used to fund
104 ancillary work unless the scope of the ancillary work is
105 directly related to and necessary for the installation and safe
106 operation of a qualifying improvement and the cost of the
107 ancillary work does not exceed the cost of the individual
108 qualifying improvement to which it is directly related.

109 (8) A financing agreement may not be approved unless it
110 has reasonably been determined or commercially available
111 methods have been used to reasonably determine that:

112 (a) The property taxes and other assessments on the
113 property are current and that the property owner has not been
114 delinquent in making such payments for the preceding 3 years or
115 for the time the property owner has owned the property,
116 whichever is less.

117 (b) The property has no recorded and outstanding
118 involuntary liens in excess of \$1,000.

119 (c) There are no notices of default currently recorded on
120 the property that have not been rescinded.

121 (d) For residential properties, the property owner has
122 not been subject to a bankruptcy proceeding within the last 7
123 years unless it was discharged or dismissed more than 2 years
124 before the application date.

125 (e) For residential properties, the property owner is

126 current on nonmortgage debt excluding medical debt, and has had
127 no more than one late payment exceeding 30 days during the 12
128 months immediately preceding the application date.

129 (f) The property owner is current on all mortgage debt on
130 the property and has had no more than one late payment
131 exceeding 30 days during the 12 months immediately preceding
132 the application date.

133 (g) The property is within the geographic boundaries of
134 the applicable qualifying improvements program.

135 (h) The total financed amount and mortgage-related debt
136 on the property does not exceed 97 percent of the fair market
137 value of the property, as determined pursuant to subsection
138 (10).

139 (i) The term of the financing agreement does not exceed
140 the estimated useful life of the qualifying improvement for
141 which the majority of the financing has been provided. The
142 program administrator shall determine the useful life using
143 established third-party standards or certification criteria
144 from government agencies or nationally recognized standards and
145 testing organizations.

146 (j) The program administrator or other entity must ask if
147 the property owner has obtained or sought to obtain additional
148 qualifying improvements on the same property that have not yet
149 been recorded. The failure of a property owner to disclose
150 information set forth in this subsection does not invalidate a

151 financing agreement or any obligation thereunder, even if the
152 total financed amount of the qualifying improvement exceeds the
153 amount that would otherwise be authorized under paragraph (h)
154 or subsection (18).

155

156 The existence of a prior qualifying improvement assessment or a
157 prior financing agreement is not evidence that the financing
158 agreement under consideration is affordable or meets other
159 program requirements.

160 (9) In addition to obtaining the information in
161 subsection (8), and before a program administrator or other
162 entity approves a qualifying improvement on residential
163 property, he or she must use information contained in the
164 property owner's application, reasonably reliable third-party
165 records, or an automated verification system to reasonably
166 determine whether the property owner has the ability to pay the
167 annual assessment for the qualifying improvement. The program
168 administrator must review the property owner's household
169 income, housing expenses, assets, and other debt obligations.
170 If the program administrator uses an automated verification
171 system, it must be a system that can verify the property
172 owner's income, is not based on predictive or estimation
173 methodologies, and has been determined sufficient for such
174 verification purposes by a federal mortgage lending authority
175 or regulator. In reviewing the property owner's ability to pay,

176 the program administrator:

177 (a) When determining the household income, may include
 178 the income of any property owner aged 18 years old or older
 179 whose name is on the property title. If a person's income is
 180 considered, that person's debt obligations must also be
 181 considered.

182 (b) May not consider the equity of the property that will
 183 secure the assessment.

184 (c) Shall determine the property owner's debt obligations
 185 using reasonably reliable third-party records, including at
 186 least one consumer credit report from an agency that meets the
 187 requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be
 188 reviewed include:

189 1. Secured and unsecured debt.

190 2. Housing expenses. A program administrator shall make a
 191 reasonable estimate of the basic housing expenses based on the
 192 number of persons in the household.

193 3. Stated alimony or child support obligations.

194 (d) Shall determine whether the property owner has
 195 sufficient income to pay the annual assessment and that he or
 196 she has sufficient residual income to meet his or her household
 197 living expenses.

198 (10) A program administrator must derive the fair market
 199 value of the property using one of the following methods and
 200 must disclose the value to the property owner before the

201 property owner executes the financing agreement:

202 (a) The value derived using an automated valuation model
203 provided by a third-party vendor that contains estimation
204 models with confidence scores, if available. To use this
205 method:

206 1. The third-party vendor must provide regular
207 statistical calibration.

208 2. The program administrator must use at least three
209 automated valuation models for each property. If a model
210 provides a range of values, the value for the model shall be
211 the average between the high and low values.

212 3. The program administrator must use the value with the
213 highest confidence score for a property. If an automated
214 valuation model does not provide a confidence score for a
215 subject property, the program administrator must use the
216 average of all estimated values to determine the fair market
217 value.

218 (b) The property appraiser's determination of just value.

219 (c) An appraisal prepared by an independent third party,
220 a broker price opinion, a comparative market analyses, or any
221 other methodology commonly used in the real estate finance
222 industry.

223 (11)(a) Before a residential property owner executes a
224 financing agreement, the program administrator must orally
225 review the key terms of the financing agreement, using plain

226 language, with at least one property owner or the verified
227 authorized representative of the owner and that person must
228 provide written acknowledgment that the oral confirmation was
229 given.

230 (b) The program administrator must record the oral
231 confirmation in an audio format and protect the information as
232 required by law. The program administrator may not use a
233 prerecorded device.

234 (c) The program administrator shall develop additional
235 procedures under this subsection to address the needs and
236 concerns of elderly persons.

237 (12) (a) Each local government that offers a qualifying
238 improvements program must develop a written disclosure form
239 that must be provided to the residential property owner before
240 he or she executes the financing agreement and which contains
241 the key terms of the agreement, including:

242 1. A description of the qualifying improvement and
243 ancillary work;

244 2. The total financed amount, including the cost of the
245 qualifying improvement, ancillary work, installation, program
246 fees, and prepaid interest, if any;

247 3. The annual assessment process and yearly schedule;

248 4. The amount of the annual assessment;

249 5. The term of the total financed amount;

250 6. The interest rate for the financed amount; and

- 251 7. The annual percentage rate.
- 252 (b) The disclosure form must also contain the following
- 253 statements and must be individually acknowledged by the
- 254 residential property owner:
- 255 1. "I understand that if I sell or refinance the
- 256 property, I may be required to pay off the outstanding financed
- 257 amount as a condition of the sale or the refinance."
- 258 2. "I understand that I cannot be assessed a penalty if I
- 259 prepay the outstanding financed amount."
- 260 3. "I understand that utility savings are not guaranteed
- 261 and will not reduce the assessment payments or total financed
- 262 amount."
- 263 4. "I understand that the annual assessment will be paid
- 264 when property taxes are paid and will result in a lien being
- 265 placed on my property."
- 266 5. "I understand that the annual assessment will be added
- 267 to my property tax bill and if I pay my property taxes through
- 268 my mortgage payment using an escrow or impound account, I
- 269 should notify my mortgage lender, so that my monthly mortgage
- 270 payment can be adjusted to cover the increased property tax
- 271 bill."
- 272 6. "I understand that if I fail to pay the annual
- 273 assessment, I may incur penalties and fees and the local
- 274 government could issue a tax certificate which might result in
- 275 me losing my property."

276 7. "I understand that I should seek professional tax
277 advice if I have questions regarding tax credits, tax
278 deductibility, or the tax impact on the annual assessment or
279 the financing agreement."

280 8. "I understand that I have 3 days to cancel the
281 financing agreement. The 3-day right expires on midnight of the
282 third business day after I sign the agreement."

283 (c) In addition, a program administrator must provide a
284 printed cancellation form to the residential property owner no
285 later than the time the property owner signs the financing
286 agreement which would allow the property owner to cancel the
287 contract.

288 (13) (a) A contract to sell or install a qualifying
289 improvement that is related to an application for financing in
290 a qualifying improvements program for a residential property is
291 unenforceable and a contractor may not begin work under such a
292 contract if:

293 1. The property owner would not have entered into the
294 contract but for the belief that the qualifying improvement or
295 its installation would be paid under the financing agreement;

296 2. The property owner applied for, accepted, and canceled
297 a qualifying improvement financing agreement within the 3-day
298 right-to-cancel period set forth in subparagraph (12) (b) 8.

299 (b) If a contractor has initiated work on a residential
300 property under an unenforceable contract as determined under

301 paragraph (a), the contractor:

302 1. May not receive compensation for that work under the
303 financing agreement.

304 2. Shall restore the property to its original condition
305 at no cost to the property owner.

306 3. Shall immediately return any money, property, and
307 other consideration given by the property owner. If the
308 property owner provided any property and the contractor does
309 not or cannot return it, the contractor shall immediately
310 return the fair market value of the property or its value as
311 designated in the contract, whichever is greater.

312 (c) If the contractor has delivered chattel or fixtures
313 to the residential property pursuant to an unenforceable
314 contract, the contractor shall have 90 days from the date the
315 contract was executed to retrieve the chattel or fixtures
316 provided that:

317 1. The contractor has fulfilled the requirements of
318 subparagraphs (b)2. and 3.

319 2. The chattel and fixtures can be removed at the
320 contractor's expense without damaging the property owner's
321 property and practically returned.

322 (d) The residential property owner may retain any chattel
323 or fixtures provided pursuant to an unenforceable contract if a
324 contractor fails to comply with the provisions of this
325 subsection.

326 (e) A contract which is otherwise unenforceable under
327 this subsection remains enforceable if the residential property
328 owner waives his or her right to cancel the contract, allows
329 the contractor to proceed with the installation of the
330 qualifying improvement, and cancels the financing agreement.

331 (14) (a) A program administrator may not authorize a
332 contractor or third party to advertise the availability of
333 financing agreements or solicit property owners on behalf of
334 the program administrator, unless:

335 1. The contractor or third party maintains the
336 appropriate registration or certification from the Construction
337 Industry Licensing Board or any other permit, license, or
338 registration required to conduct business in the jurisdiction
339 where it operates, and provides proof of having the required
340 bond and insurance coverage amounts.

341 2. The program administrator obtains the contractor's or
342 third party's written agreement that the contractor or third
343 party will meet applicable laws and rules and qualifying
344 improvement program policies and procedures, including those on
345 advertising and marketing.

346 (b) A program administrator may not provide any direct or
347 indirect cash payment or thing of material value to a
348 contractor in excess of the actual price charged by that
349 contractor for the sale and installation of the qualifying
350 improvements that are financed by a financing agreement.

351 However, a program administrator may provide information or
352 service to a contractor to facilitate the installation of a
353 qualifying improvement for a property owner.

354 (c) A program administrator may not reimburse a
355 contractor for its expenses for advertising and marketing
356 campaigns and materials. A program administrator and a
357 contractor may share expenses in connection with joint
358 advertising and marketing campaigns and materials, if the
359 expenses are shared on a commercially reasonable basis.

360 (d) A program administrator may not provide any direct
361 cash payment or other thing of material value to a property
362 owner explicitly conditioned upon the property owner entering
363 into a financing agreement. However, a program administrator
364 may offer programs or promotions that provide reduced fees or
365 interest rates if the reduced fees or interest rates are
366 reflected in the financing agreements and are not provided to
367 the property owners as cash consideration.

368 (e) A program administrator, contractor, or a third party
369 may not make any representation as to the tax deductibility of
370 a financing agreement unless that representation is consistent
371 with representations, statements, or opinions of the Internal
372 Revenue Service or an applicable state tax agency with regard
373 to the tax treatment of non-ad valorem assessments.

374 (f) A program administrator may not provide to a
375 contractor engaged in soliciting financing agreements on its

376 behalf any information that discloses the amount of funds for
377 which a property owner is eligible for qualifying improvements
378 or the amount of equity in a property.

379 (g) For residential properties, a contractor may not
380 provide a different price for a qualifying improvement financed
381 under this section than the contractor would provide if the
382 property owner paid for the improvement in cash.

383 (15) A program administrator may not make the final
384 payment to a contractor unless the property owner has signed a
385 certificate of completion.

386 (16) (a) The qualifying improvements program must post, on
387 its website, an updated list of products that have been
388 approved by the local government as qualifying improvements.
389 The list shall, at a minimum, include the following information
390 for each product on that list:

391 1. A name or description of the product.

392 2. Eligibility criteria, including performance
393 thresholds, certification requirements, and installation
394 criteria.

395 (b) A product may not be included on the list unless the
396 product meets one or more standards or certification criteria
397 established by appropriate federal government agencies or by
398 credible third-party private organizations.

399 (c) A program administrator may include additional
400 products as part of an overall project for qualifying

401 improvements that are not included in the list of products if
 402 the following information is available:

403 1. An application process, approved by the local
 404 government, that allows a contractor or property owner to
 405 request a product to be considered as a qualifying improvement.

406 2. Guidelines approved by the local government, which the
 407 program administrator will use in reviewing the application for
 408 a custom improvement. The guidelines must identify minimum
 409 requirements needed for approval of a custom improvement.

410 (18)-(8) A local government may enter into a financing
 411 agreement only with the record owner of the affected property.
 412 Any financing agreement entered into pursuant to this section
 413 or a summary memorandum of such agreement shall be recorded in
 414 the public records of the county within which the property is
 415 located by the sponsoring unit of local government within 5
 416 days after execution of the agreement. The recorded agreement
 417 shall provide constructive notice that the assessment to be
 418 levied on the property constitutes a lien of equal dignity to
 419 county taxes and assessments from the date of recordation. An
 420 agreement, including supporting documents and disclosures,
 421 entered into under this section does not need to be notarized.

422 ~~(9) Before entering into a financing agreement, the local~~
 423 ~~government shall reasonably determine that all property taxes~~
 424 ~~and any other assessments levied on the same bill as property~~
 425 ~~taxes are paid and have not been delinquent for the preceding 3~~

426 ~~years or the property owner's period of ownership, whichever is~~
427 ~~less; that there are no involuntary liens, including, but not~~
428 ~~limited to, construction liens on the property; that no notices~~
429 ~~of default or other evidence of property-based debt delinquency~~
430 ~~have been recorded during the preceding 3 years or the property~~
431 ~~owner's period of ownership, whichever is less; and that the~~
432 ~~property owner is current on all mortgage debt on the property.~~

433 (25) The qualifying improvements program shall post on
434 its website a report by December 31 each year containing the
435 following information, separated by city, county, and zip code,
436 and all methodologies and supporting assumptions or sources
437 relied upon in preparing the report:

438 (a) The number of qualifying improvements funded.

439 (b) The aggregate, average, and median dollar amounts of
440 annual and total qualifying improvements assessments funded.

441 (c) The percentage, the number, and the dollar value of
442 qualifying improvements assessments represented by the category
443 types consisting of energy efficiency, renewable energy, and
444 wind resistance.

445 (d) The number of defaulted assessments including the
446 total number and defaulted amount, the number and dates of
447 missed payments, the total number of parcels defaulted and
448 years in default, and the percentage of defaults by total
449 assessments.

450 (e) The total amount of energy saved, total dollar amount

HB 1225

2018

451 of such savings by property owners by qualifying improvements
452 installed, total number of energy savings improvements, and
453 number of improvements installed that meet standards of the
454 Energy Star program of the United States Environmental
455 Protection Agency, including the overall average efficiency
456 rating of installed products for each category type as set
457 forth in paragraph (c).

458 (f) The total amount of renewable energy produced by the
459 type of qualifying improvement installed and total number of
460 renewable energy installations, including the average and
461 median system size.

462 (g) Estimated amount of greenhouse gas emissions
463 reductions.

464 (h) Estimated number of jobs created.

465 (i) The number and percentage of homeowners 60 years of
466 age or older.

467 Section 2. This act shall take effect July 1, 2018.