A bill to be entitled
An act relating to clean energy programs; amending s. 163.08, F.S.; creating the Property Assessed Clean Energy Act; revising legislative findings; providing definitions; providing that a property owner may apply to an approved PACE administrator for a PACE loan; authorizing a local government to enter into an agreement with a PACE administrator; specifying that a local government or PACE administrator may enter into a PACE loan contract only with the record owner of a qualifying commercial or residential real property; removing a requirement for constructive notice; requiring that a local government determine that the property owner has not filed for bankruptcy within a specified number of years before entering into a PACE loan contract; providing the lien position of a PACE loan; providing requirements for financing a qualifying residential real property; providing requirements for PACE loan contracts; providing a right to cancel a PACE loan contract and requiring a disclosure statement to be provided to the property owner relating to such right; requiring a financing estimate and disclosure form; prohibiting PACE administrators and contractors from engaging in certain practices; removing provisions relating to the
non-ad valorem assessment of property; removing provisions requiring the property owner to provide certain notice to the holders or loan servicers of any existing mortgages encumbering or secured by the property; prohibiting a local government or PACE administrator from entering into a PACE loan contract under certain circumstances; providing claims and defenses; requiring a PACE administrator to comply with the Servicemembers Civil Relief Act; providing remedies; providing an effective date.

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

Section 1. Section 163.08, Florida Statutes, is amended to read:

163.08 Property Assessed Clean Energy Act

authority for improvements to real property.—

(1) Short title.—This section may be cited as the "Property Assessed Clean Energy Act" or the "PACE Act."

(2)(a) Legislative findings.—In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of The state comprehensive plan provides to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use
of renewable energy resources. That act also declared it is the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All
improved properties not protected from wind damage by wind
resistance qualifying improvements contribute to the burden
affecting all improved property resulting from potential wind
damage. Improved property that has been retrofitted with wind
resistance qualifying improvements receives the special benefit
of reducing the property's burden from potential wind damage.
Further, the installation and operation of qualifying
improvements not only benefit the affected properties for which
the improvements are made, but also assist in fulfilling the
goals of the state's energy and hurricane mitigation policies.
In order to make qualifying improvements more affordable and
assist property owners who wish to undertake such improvements,
the Legislature finds that there is a compelling state interest
in enabling property owners to voluntarily finance such
improvements with local government assistance.
(c) The Legislature determines that the actions authorized
under this section, including, but not limited to, PACE loans
for the financing of qualifying improvements through the
execution of loan contracts financing agreements and the related
imposition of voluntary assessments are reasonable and necessary
to serve and achieve a compelling state interest and are
necessary for the prosperity and welfare of the state and its
property owners and inhabitants.
(3)(2) Definitions.—As used in this section, the term:
(a) "Local government" means a county, a municipality, a
dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(b) "PACE administrator" means an entity with whom a local government contracts to administer a PACE program.

(c) "PACE contractor" means a person that installs qualifying improvements under this section.

(d) "PACE loan" means the extension of financing offered to an owner of qualifying commercial or residential real property for a qualifying improvement which is repayable through a non-ad valorem assessment.

(e) "PACE loan contract" means the legal agreement between a local government, a PACE administrator, or a PACE contractor and a qualifying property owner containing the terms and conditions of a PACE loan.

(f) "Qualifying commercial real property" means a multifamily residential, commercial, or industrial building that a local government has determined may be benefited by installation of a qualifying improvement.

(g) "Qualifying improvement" includes any:

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

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:
   a. Improving the strength of the roof deck attachment;
   b. Creating a secondary water barrier to prevent water intrusion;
   c. Installing wind-resistant shingles;
   d. Installing gable-end bracing;
   e. Reinforcing roof-to-wall connections;
   f. Installing storm shutters; or
   g. Installing opening protections.
   
   (h) "Qualifying residential real property" means a single-family residential building that the local government has determined may be benefited by installation of a qualifying improvement.

   (4) (3) Program purpose and authority.—
(a) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(b)(4) Subject to local government ordinance or resolution, a property owner may apply to the local government or an approved PACE administrator for funding to finance a qualifying improvement and enter into a PACE loan contract financing agreement with the local government or the PACE administrator. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(c)(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.
(d)(6) A local government may enter into an agreement with a PACE administrator to administer the PACE Act. A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

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

(f)(8) A local government or PACE administrator, as applicable, may enter into a PACE loan contract financing agreement only with the record owner of the qualifying commercial or residential real affected property. Any PACE loan contract financing agreement entered into pursuant to this section or a summary memorandum of such contract agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the PACE loan contract agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(5)(9) Program requirements.—Before entering into a PACE loan contract financing agreement, the local government shall reasonably determine that:
(a) All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less.†

(b) That there are no involuntary liens, including, but not limited to, construction liens on the property.†

(c) That no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less,‡ and

(d) That the property owner is current on all mortgage debt on the property.

(e) The property owner has not filed for bankruptcy protection within the preceding 3 years.

(6) PACE loan lien position.—Notwithstanding any law to the contrary, a PACE loan is:

(a) Subordinate to all liens on the qualifying real property recorded before the notice of the PACE lien is recorded.

(b) Subordinate to a first mortgage on the qualifying real property recorded after the notice of the PACE lien is recorded.

(c) Superior to any lien on the qualifying real property recorded after the notice of the PACE lien is recorded.

(7) Financing for qualifying residential real property.—A local government must verify that:
(a) The maturity date of the PACE loan does not exceed the useful life of the qualifying improvement, as determined by the local government; however, a term may not exceed 15 years.

(b) The PACE loan amount does not exceed the lesser of 15 percent of the assessed value of the real property on which the qualifying improvement will be installed or the actual cost of all qualifying improvements on the property, including the labor to install the improvements, and any equipment or materials used to install the improvements.

(c) The combined debt of existing mortgages and the PACE loan amount does not exceed 75 percent of the assessed value of the real property.

(8) PACE loan contracts for qualifying residential real property.—

(a) A residential PACE loan contract must:

1. Be in writing and contain all the terms and conditions of the PACE loan.

2. Be signed by the owner of qualifying residential real property.

3. Be written in the language in which the contract was negotiated.

4. Offer a fixed simple interest rate.

5. Charge an interest rate that does not exceed any rates required by law.

6. Fully amortize the debt obligation.
7. Authorize prepayment of some or all of the PACE loan balance with no penalty, fee, or other charge for such prepayment.

8. Include the right to cancel as provided in subsection (12).

(b) A residential PACE loan contract may not:
1. Result at any time in negative amortization;
2. Charge any interest upon interest or fees; or
3. Contain any provision requiring forced arbitration or restricting class action.

(9) Underwriting for qualifying residential real property.—

(a) The local government, PACE administrator, or PACE loan contractor may not enter into a PACE loan contract with the property owner of qualifying residential real property until it has been verified that the property owner has the ability to repay the loan by determining that the:

1. Property owner's total monthly debt to total monthly income ratio at the time the loan is executed does not exceed 43 percent, including the PACE loan.

2. Property owner has sufficient residual income to meet basic living expenses.

(b) Income, debt, and expenses must be verified by using third-party records that provide reasonably reliable evidence of the property owner's income, debt, and expenses. A PACE
administrator may verify the property owner's income using a tax return transcript issued by the Internal Revenue Service. The local government may also use the following records to verify the property owner's income or assets:

1. Copies of the property owner's tax returns filed with the Internal Revenue Service;
2. Internal Revenue Service forms used for reporting wages or tax withholding;
3. Payroll statements;
4. Financial institution records;
5. Records from the property owner's employer; or
6. Records from any government agency stating the property owner's income from any benefits or entitlements.

(c) For the purposes of this subsection, the term:

1. "Basic living expenses" includes, but is not limited to, food and other household necessities; medical expenses, including premiums, co-pays, and cost of medicine, and other-related expenses; transportation costs, including fuel, auto insurance, and maintenance; public transportation costs; and utility expenses.

2. "Residual income" means the property owner's remaining income after subtracting the owner's total monthly debt obligations from the owner's total monthly income.

3. "Total monthly debt" means the sum of the property owner's monthly debt obligations such as mortgage-related

CODING: Words stricken are deletions; words underlined are additions.
obligations, which include all mortgage principal and interest payments, insurance, property taxes, mortgage guaranty insurance, and other preexisting fees and assessments, including the PACE assessment, on the property unsecured debt, and court ordered alimony and child support.

4. "Total monthly income" means the sum of the property owner's current or reasonably expected income, including any income from assets and excluding the qualifying residential real property, including any attached real property, that secures the PACE loan. Such income may not be derived from temporary sources of income, illiquid assets, or proceeds derived from the equity from the qualifying residential real property.

(10) Confirmation for PACE loans on qualifying residential real property.—Before the execution by the owner of qualifying residential real property of a PACE contract and before the commencement of any installation of any energy improvement, the local government or the PACE administrator must orally, in a live, recorded telephone conversation with the owner:

(a) Confirm the key terms of the agreement and the scope of energy improvement work, including, at a minimum:

1. The measures to be installed that are financed by a PACE loan;

2. The total estimated annual payment;

3. The date the first tax payment will be due;

4. The interest rate expressed as an annual percentage
rate;

5. The term of the loan; and

6. That repayments will be made through the owner's

property taxes.

(b) Verify that the owner understands:

1. The key terms of the agreement;

2. That if payments are escrowed, by how much the escrowed

amounts will increase, or, if payments are not escrowed, that

the property owner should save enough money during the year to

cover the increase in property taxes from the PACE loan;

3. That the PACE loan becomes a PACE lien on the owner's

property and will likely need to be paid off when the house is

sold;

4. The right to cancel a PACE loan contract under

subsection (12);

5. The risks that energy savings from the energy

improvements will not equal or exceed the PACE loan payments

added to the owner's property taxes;

6. That the owner may encounter difficulty when

refinancing or selling the home; and

7. The risk of a tax lien for failure to pay increased

property taxes or foreclosure for failure to pay increased

escrow payments to the mortgage holder.

(c)1. Upon confirming and verifying the terms and risks

provided in paragraphs (a) and (b) with the property owner, the
PACE administrator must ask if the owner would prefer to communicate during the confirmation primarily in a language other than English. If the preferred language is supported by the PACE administrator, the oral confirmation shall be given in the preferred language, unless the property owner on the call chooses to communicate through an interpreter chosen by the owner. If the preferred language is not supported and the property owner does not choose an interpreter, the PACE administrator shall terminate the call and a PACE loan contract may not be executed.

2. The confirmation must be conducted in the primary language of the homeowner if the PACE contract was explained, discussed, or negotiated in that language.

3. For purposes of this paragraph, the term "interpreter chosen by the owner" means a person who is at least 18 years of age, who is not employed by the PACE administrator or the PACE contractor, and whose services are not made available through the administrator or the contractor.

(d) A voicemail message does not meet the requirements of this subsection.

(11) Required screening.—Before entering into a PACE loan on qualifying residential real property, income eligible households must be screened for eligibility for the Weatherization Assistance Program or other low or no cost programs that may be provided by the Florida Housing Finance
Corporation or the utility company serving the property owner.

(12) Right to cancel a PACE loan contract.—

(a) A local government may not permit a property owner to enter into a PACE loan contract pursuant to this section unless the property owner is given the right to cancel the PACE loan contract.

(b) The property owner must receive the right to cancel within 3 business days after the owner has signed the contract, received the financing estimate and disclosure, or received the notice of right to cancel, whichever is latest.

(c) The property owner shall be provided with a notice of cancellation form or a substantially similar form that contains displays the same information in a similar format. The form shall be provided to the property owner as a separate, printed copy in at least 12-point font and must contain the following statement:

To cancel the PACE loan contract you must mail or otherwise deliver a signed and dated copy of this form to (insert name of the PACE administrator) at (insert physical address or, if the PACE administrator accepts electronic cancelations, the email address of the PACE administrator). You do not have to use this form, but must notify (insert the name of the residential PACE administrator) in writing at the PACE administrator's physical address of your intention to cancel. If you
cancel, any payments made by you under this contract will be returned within 20 business days after the PACE administrator receives this form.

(d) When an owner of qualifying residential real property cancels a PACE loan, the owner is not liable for any amount, including any finance charge, fee, or other charge.

(e) The right to cancel as provided under this subsection may not be waived.

(13) Financing estimate and disclosure.—

(a) A financing estimate and disclosure form or a substantially equivalent form that displays the same information in a substantially similar format shall be provided to the property owner at least 3 business days before the PACE loan contract is signed. The disclosure form must contain the following statement:

Payments on the PACE loan contract will be made through taxes assessed on the property. If your property taxes are paid through an escrow account, your mortgage lender may apportion the amount and add it to your monthly payment. You may be required to pay off the remaining balance of the PACE loan before you can sell or refinance your property. If your property tax payment is late, the enforcement and collection procedures in the Florida Uniform Assessment
Collection Act may be used for the sale of tax
certificate for your property and the ultimate sale of
your property for the payment of the delinquent
assessment installments, associated penalties,
interest, and other costs.

(b) The disclosure form must also contain cost and fee
information, including, but not limited to, product costs,
financing costs, annual percentage rates, interest rates, and
administrative fees, and a customer service toll-free telephone
number and email address to address customer complaints.

(14) Prohibited practices.—A PACE administrator or PACE
contractor may not:

(a) Make any monetary or percentage representations of
increased value to a property owner regarding the effect the
financed improvements will have on the market value of the
property;

(b) Make any false, deceptive, abusive, or misleading
statement or material omission in connection with a PACE loan,
including, but not limited to, any statement that a PACE loan is
a free form of public assistance or a government program, that a
PACE loan will be repaid by the subsequent owner of the
qualifying residential property, that the improvements will pay
for themselves, or that the property owner will receive tax
benefits from the program;
(c) Begin construction work before the expiration of the cancelation period following the execution of a PACE loan contract;
(d) Charge the property owner a different price than would be charged for similar improvements that are not financed through a PACE loan;
(e) Disclose or permit disclosure to a PACE contractor or a third party engaged in soliciting assessment contracts of the amount of the PACE loan financing for which a property owner is eligible;
(f) Offer or provide direct or indirect monetary payments or any other form of compensation, incentive, kickback, inducement, or any other thing of value to a PACE contractor to offer, favor, or refer a property owner to a PACE loan over other forms of financing or credit; or
(g) Sell, assign, or otherwise convey a PACE loan debt to a debt buyer.

(15) Qualifying improvements.—
(a) A qualifying improvement shall be affixed to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a
certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

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

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum...
principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(16) Lienholder notice and consent.—
(a) A local government or a PACE administrator may not enter into a PACE loan contract with a qualifying owner unless the owner, the local government, or the PACE administrator has:

1. Provided written notice to each of the holders of any mortgage on the qualifying residential or commercial real property that the property owner intends to enter into a PACE loan contract; and

2. Obtained a verified written consent from each of the holders of any mortgage on the qualifying residential or commercial real property.

(b) A PACE loan may not be made unless the qualifying
property owner, the local government, or the PACE administrator receives signed confirmation from the holder of any mortgage on the qualifying real property that entering into the PACE loan contract does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan or other contractual agreement.

(17) Preservation of claims and defenses.—A subsequent owner of, a successor in interest to, or any person obligated to pay the property taxes on qualifying residential real property encumbered by a PACE lien may assert all claims and defenses against a PACE administrator or servicer of a PACE loan that the owner of qualifying residential real property who originally entered into the PACE loan could assert against the original PACE administrator or servicer of a PACE loan.

(18) Relation to other laws.—A PACE administrator must comply with the Servicemembers Civil Relief Act, 50 U.S.C. ss. 3901 et seq. However, for purposes of this section, the rights granted under that act may not be waived.

(19) Remedies.—In addition to remedies under the Florida Deceptive and Unfair Trade Practices Act, any owner of qualifying residential real property aggrieved by a violation of this section is entitled to actual, incidental, and consequential damages; reasonable attorney fees; investigative and court costs; and any other equitable relief as determined by the court against the local government, PACE administrator, or
PACE contractor.

(20) (14) Assessment for qualifying improvement.—At or before the time a seller purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(21) (15) Enforceability.—A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(22) (16) Home rule authority.—This section is additional and supplemental to county and municipal home rule authority and
not in derogation of such authority or a limitation upon such authority.

Section 2. This act shall take effect July 1, 2020.