HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7179 PCB EUP 10-03 Qualifying Improvements to Real Property
SPONSOR(S): Finance & Tax Council; Energy & Utilities Policy Committee; Precourt
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 2322

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Energy & Utilities Policy Committee	13 Y, 0 N	Whittier	Collins
1)	Finance & Tax Council	12 Y, 0 N, As CS	Diez-Arguelles	Langston
2)	General Government Policy Council		Whittier	Hamby
3)				
4)				
5)				

SUMMARY ANALYSIS

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. The Property Assessed Clean Energy (PACE) Program is a model that has recently become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project through proceeds of a revenue bond issuance, which is repaid through an assessment on participating property owners' tax bills. There are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owners' property tax bills.

The bill creates s. 163.08, F.S., providing supplemental authority to local governments (counties and municipalities) regarding qualified improvements to real property. The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. The qualifying improvement must be affixed to a building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor. Qualifying improvements[1] include energy conservation and efficiency improvements; renewable energy improvements; and wind resistance improvements. However, the program does not cover wind resistance improvements in buildings or facilities under new construction. The bill provides that, at least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "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." However, the bill recognizes that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

The bill authorizes a local government to: partner with one or more local governments for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

The bill provides authority for a local government to adopt a program, but does not mandate participation. The bill has no direct fiscal impact on state or local governments.

[1] These improvements are expanded upon in the Effect of Proposed Changes section of the analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

2008 Legislation

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. During the 2008 Legislative Session, the Legislature passed significant energy policies - HB 7135 (Chapter 2008-227, L.O.F.) - which built on, among many other areas, goals of energy affordability and reliability, including the promotion of renewable energy, energy conservation, and enhanced energy efficiency.

The 2008 legislation recognized that in many instances improved energy efficiency and conservation are the cheapest and most effective way to accomplish the Legislature's related goals of energy affordability and reliability while also addressing concerns with climate change. Regarding the promotion of enhanced energy efficiency and conservation, the bill:

- Added "energy" and "global climate change" to the program areas that the Executive Office of the Governor may include in the State Comprehensive Plan. It also amended goals related to energy to require Florida to reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources and low-carbon-emitting electric power plants and amended the policies related to energy to provide that it is a policy under the State Comprehensive Plan to promote low-carbon-emitting electric power plants.

- Made significant changes to require public utilities to develop and implement approved programs to promote energy conservation and demand-side management.

    - The bill required the Public Service Commission to adopt and enforce goals for each public utility to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and demand-side renewable energy systems. Under prior law, public utility companies already offered cash incentive programs to encourage purchasing energy efficient equipment for new installations or retrofits, such as heating, air cooling, water heating, and lighting equipment. The bill revised the program to essentially require public utilities to provide incentives for conservation, increased energy efficiency, and demand-side renewable energy, such as solar energy,

when doing so is less costly for utility customers, as a whole, than constructing new generating capacity.

- Provided for a phased 50 percent increase in energy efficiency standards in the Florida Building Code by the Year 2020. Those increases are relative to the 2004 Florida Building Code, as amended on October 31, 2007:

    - By 2010, efficiency increases of at least 20 percent.
    - By 2013, efficiency increases of at least 30 percent.
    - By 2016, efficiency increases of at least 40 percent.
    - By 2019, efficiency increases of at least 50 percent.

- Required the Florida Building Commission to identify within code support and compliance documentation the specific building options and elements available to meet energy performance goals. The bill included a list of energy-efficiency performance options and elements such as solar water heating, energy-efficient appliances, and energy efficient lighting systems.

- Required the Florida Building Commission, prior to implementing the increases in energy performance of new buildings, to adopt by rule and implement a cost-effectiveness test to ensure that increases in energy efficiency result in a positive net financial impact.

- Revised current law governing guaranteed energy, water, and wastewater performance savings contracting to facilitate improving the efficiency of government-owned buildings.

- Adopted Climate Friendly Public Business requirements for the use of "green" products, lodging, vehicles, and fuel.

- Established enhanced energy standards for the construction of new state, county, municipal, school district, state university, community college, state court, and water management district buildings.

- Created the "Florida Green Government Grants Act" to provide grants to local governments to develop programs that achieve green standards.

CS/HB 697 (Chapter 2008-191, L.O.F.) addressed a wide range of building construction issues including Florida Building Code standards, the Florida Building Commission, and energy efficiency standards relating to planning and construction. With regard to energy planning and conservation practices, the bill did the following:

- Revised requirements relating to the installation of energy devices based on renewable resources on buildings.

- Required that the Florida Building Code must facilitate and promote the use of cost-effective energy conserving, energy demand-management, and renewable energy technologies in buildings.

- Integrated energy efficiency issues into several components of the local government comprehensive plan, which will be due at the next evaluation and appraisal update of each local government's comprehensive plan:

    - The future land use element must address reduction in urban sprawl and energy efficient land use patterns in relation to existing and future electric power generation and transmission systems, as well as greenhouse gas reduction strategies.

    - The traffic circulation element must address strategies to reduce greenhouse gases.

- The conservation element must address factors that affect energy conservation.
- The housing element must contain standards and principals for energy efficiency in new houses.

- Allowed the Florida Building Commission to select the most current version of the International Energy Conservation Code as a foundation code.

- Added declarations to the list of deed restrictions, covenants, or other binding agreements which may not prohibit the installation of energy devices based on renewable resources.

- Specified that condominium units are residential dwellings for purposes of installation of solar collectors or other energy devices, and removed the three-story height restriction for installation of solar collectors or other energy devices on such residential dwellings.

- Directed the Department of Community Affairs, in consultation with the Florida Energy Affordability Coalition, to identify and review issues relating to improving the effectiveness of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program.

Property Assessed Clean Energy (PACE) Programs

The Property Assessed Clean Energy (PACE) Program is a model that recently has become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. According to Pacenow.org, "PACE is a program designed to allow property owners to install small-scale renewable energy systems and make energy efficiency improvements to their buildings and pay for the cost over its functional life (e.g., 20 years for solar PV) through an on-going assessment on property tax bills."

Participation in the program is voluntary. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project from proceeds of a revenue bond, which is repaid through an assessment on participating property owners' property tax bills. A lien could be placed on the property in the event that the loan is not timely repaid. If the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property's annual tax bill.[2]

Many states require legislation to authorize local governments to adopt PACE programs. According to Vote Solar, currently there are proposals in over 18 states[3] for PACE enabling legislation, and 16 states have PACE enabling legislation in place.[4]

Currently, there are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owner's property tax bills. However, under existing county and municipal home rule authority, counties and cities may already have the basic authority to implement a PACE or similar program. Special districts, on the other hand, only have those powers granted to them by law.

[2] Vote Solar website: www.votesolar.org.
[3] Ibid.
[4] California, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin.

Local Governments

Counties[5]

The following information was obtained from <u>The Local Government Formation Manual 2009-2010</u>, produced by the Military & Local Affairs Policy Committee, House of Representatives.

In Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level.[6] Article VIII, section 1 of the State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called "counties." The Florida Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter and 2) counties that are operating under a county charter. Article VIII, sections 1(f) and (g) of the State Constitution, respectively provide as follows:

> Non-Charter Government: Counties not operating under county charters shall have such powers of self-government as is provided by general and/or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> Charter Government: Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Section 125.01, F.S., outlines the powers and duties of chartered and non-chartered counties. This section provides that the county commission shall have the power to carry on county government to the extent not inconsistent with general or special law. Specific to this bill, county government authority includes the power to:

- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.
- Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates and other obligations of indebtedness. This power must be exercised according to general law. A referendum is not required for the levy by a county of ad valorem taxes for county purposes or for the providing of municipal services within any municipal service taxing unit.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code and adopt and enforce local technical amendments.
- Perform any other acts which are in the common interest of the people of the county and are not inconsistent with law.

[5] *The Local Government Formation Manual 2009-2010*, House Military & Local Affairs Policy Committee, pp. 6-10.
[6] Ibid., p. 17.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts that include both incorporated and unincorporated areas. Inclusion of an incorporated area is subject to the approval of the governing body of the affected incorporated area. Municipal services and facilities may be provided from funds derived from service charges, special assessments or taxes within the district.

Municipal Governments[7]

The following information was obtained from <u>The Local Government Formation Manual 2009-2010</u>, produced by the Military & Local Affairs Policy Committee, House of Representatives.

As noted above, in Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level. Municipalities were created to perform additional functions and provide additional services for the particular benefit of the population within the municipality.

A municipality is a local government entity located within a county and created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. A municipality is constitutionally and statutorily granted all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. A municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. Although a municipality may enact local ordinances to govern municipal affairs, the power to tax can be granted only by general law.

Article VIII, section 2 of the State Constitution authorizes the Legislature to establish or abolish municipalities or amend their charters by general or special law. The Constitution grants municipalities all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by general or special law. Each municipal legislative body must be elected by qualified voters.

The Municipal Home Rule Powers Act acknowledges that the State Constitution grants municipalities governmental, corporate and proprietary power necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law.

Special Districts[8]

The following information was obtained from <u>The Local Government Formation Manual 2009-2010</u>, produced by the Military & Local Affairs Policy Committee, House of Representatives.

Special district governments are special purpose government units that exist as separate entities, have substantial fiscal independence and have administrative independence from general purpose governments.

In Florida, special districts perform a wide variety of functions and are typically funded through ad valorem taxes, special assessments, user fees or impact fees. The Uniform Special District Accountability Act found in chapter 189, F.S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain special districts. As of October 29, 2009, there were 616 active dependent special districts and 1,003 active independent special districts in Florida.[9]

[7] Ibid., pp. 17-20.
[8] Ibid., pp. 76-87.
[9] Ibid., p. 76.

Special district governments provide specific services that are not being supplied by existing general-purpose governments. Most of these entities perform a single function, but, in some instances, their enabling legislation allows them to provide several, usually related, types of services.

A "special district" is defined in s. 189.403(1), F.S., as a “local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance or by rule of the Governor and Cabinet.” A special district has only those powers expressly provided by, or which can be reasonably implied from, the authority provided in the district‘s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.

Special Assessments

Special assessments are a home rule revenue source that may be used by a local government to fund certain services and construct and maintain capital facilities. As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government’s special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax, which is levied for the general benefit of residents and property rather than for a specific benefit to property.

The applied legal test used to evaluate whether or not a special benefit is conferred on property by the provision of a service is if there is a logical relationship between the provided service and the benefit to property. This test defines the line between those services that can be funded by special assessments versus those failing to satisfy the special benefit test. Examples of services that possess this logical relationship to property and can be funded wholly or partially by special assessments include solid waste collection and disposal, stormwater management, and fire rescue. Once the service or capital facility satisfies the special benefit test, the assessment must be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments for county and municipal governments. Special districts derive their authority to levy special assessments through general law or special act.

Non-Ad Valorem Assessments

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as “only those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution.” Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon…."

Section 197.3632(3)(a), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Section 197.3632(4)(a), F.S., requires a local government to adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Section 197.3632(4)(b), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include the following information:

- The purpose of the assessment;
- The total amount to be levied against each parcel;
- The unit of measurement to be applied against each parcel to determine the assessment;
- The number of such units contained within each parcel;
- The total revenue the local government will collect by the assessment;
- A statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title;
- A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
- The date, time, and place of the hearing.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- The name of the local governing board;
- A geographic depiction of the property subject to the assessment;
- The proposed schedule of the assessment;
- The fact that the assessment will be collected by the tax collector; and
- A statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Section 197.3632(4)(c), F.S., provides that at the public hearing, the local governing board is required to receive written objections and hear testimony from all interested persons. If the local governing board adopts the non-ad valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of the assessment. The board may adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment.

Renewable Energy and Wind Resistance Property Assessment Constitutional Amendment

In the November 2008 General Election, Florida's voters approved a constitutional amendment (Amendment #3) placed on the ballot by the Taxation and Budget Reform Commission. This amendment added the following language to Article VII, Section 4 of the Florida Constitution (Taxation; assessments):

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

During the 2009 Legislative Session, the House passed CS/HB 7113, which implemented the constitutional provision regarding the assessed value of real property. The bill died in Senate Messages.

The bill provided that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
    - Improving the strength of the roof deck attachment.
    - Creating a secondary water barrier to prevent water intrusion.
    - Installing hurricane-resistant shingles.
    - Installing gable-end bracing.
    - Reinforcing roof-to-wall connections.
    - Installing storm shutters.
    - Installing impact-resistant glazing.
    - Installing hurricane-resistant doors.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
    - Solar energy collectors, photovoltaic modules, and inverters.
    - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
    - Rockbeds.
    - Thermostats and other control devices.
    - Heat exchange devices.
    - Pumps and fans.
    - Roof ponds.
    - Freestanding thermal containers.
    - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
    - Windmills and wind turbines.
    - Wind-driven generators.
    - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
    - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed. To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide

insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled Development of Loss Relativities for Wind Resistive Features of Residential Structures, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.[10]

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.[11] In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.[12] Thus, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.[13] In 2008, the OIR obtained a new study to evaluate the appropriate mitigation discount amounts; however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The form must be signed by a hurricane mitigation inspector certified by the My Safe Florida Home Program; a building code inspector; a general, building, or residential contractor; a professional engineer meeting specified criteria; a professional architect; or any other individual or entity acceptable to the insurance company. A form certified by the Department of Financial Services must also be accepted by the insurer.

Effect of Proposed Changes

The bill creates s. 163.08, F.S., providing supplemental authority to local governments regarding improvements to real property.

New section 163.08(1), F.S., provides legislative purpose and intent, noting that in 2008, the Legislature declared it the public policy of the state to play a leading role in promoting energy conservation, energy security, and reduction of greenhouse gases. The 2008 Legislature amended the energy goal of the State Comprehensive Plan to require energy requirement reductions 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. It also provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction.[14] Also in 2008, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.[15]

[10] The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.
[11] In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.
[12] Section 14, Ch. 2006-12, L.O.F.
[13] The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.
[14] Chapter 2008-227, L.O.F.
[15] Chapter 2008-191, L.O.F.

The bill finds that improved properties not using energy conservation strategies contribute to the burden affecting all improved property from fossil fuel energy production; likewise, the bill finds that all improved properties not protected from wind damage by wind resistance improvements contribute to the burden affecting all improved property resulting from potential wind damage. The bill declares improved properties that have been retrofitted with energy-related or wind resistance qualified improvements receive the special benefit of reducing the property's burden from energy consumption or potential wind damage. Further, the bill declares that the installation and operation of qualifying improvements not only benefits the affected properties, but assists in fulfilling the goals of the state's energy and hurricane mitigation policies. The bill states that it is a compelling state interest to make qualifying improvements more affordable and enable property owners, on a voluntary basis, to finance such improvements with local government assistance. It states that the actions authorized under the act are reasonable and necessary to achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

The bill defines "local government" as "a county or municipality."

The bill defines a "qualifying improvement" as including any of the following:

- "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or 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 daylighting;
    - Replacement of windows;
    - Installation of energy controls or energy recovery systems;
    - Installation of electric vehicle charging equipment; and
    - Installation of efficient lighting equipment.

- "Renewable energy improvement," which means the installation of any system whose 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.

- "Wind resistance improvement," which includes, but is not limited to:
    - Improving the strength of the roof deck attachment;
    - Creating a secondary water barrier to prevent water intrusion;
    - Installing wind-resistant shingles;
    - Installing gable-end bracing;
    - Reinforcing roof-to-wall connections;
    - Installing storm shutters; and
    - Installing opening protections.

The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. The qualifying improvement must be affixed to a building or facility that is part of the property and if the work requires a license, it must be performed by a properly

certified or registered contractor.[16] The program does not cover wind resistance improvements in buildings or facilities under new construction.

The local government may enter into a financing agreement only with the record owner of the property. The financing agreement or a summary memorandum of the agreement must be recorded in the public records of the county within 5 days after the agreement is executed. The recorded document must give constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments.

At least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "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." However, the bill recognizes that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

Without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment or municipal or county lien for a property cannot exceed 20 percent of the just value of the property, as determined by the county property appraiser. However, if an energy conservation and efficiency or a renewable energy qualifying improvement is supported by an energy audit, the amount financed is not limited to 20 percent, if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the assessment or lien.

The bill authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.
- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment.

Prior to entering into a financing agreement, a local government is required to "reasonably determine" that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years or the property owner's period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years or the property owner's period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

If utilizing a non-ad-valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Under current law, the special assessment process must be initiated prior to January 1 of each year. The bill

[16] Pursuant to ch. 489, Part I and Part II, F.S.

provides an exception to the provisions in s. 197.3632, F.S., allowing the process to start on or before August 15, if the property appraiser, tax collector, and local government agree. This will allow local governments to begin the necessary special assessment process this calendar year.

Each contract for the initial sale of a parcel (newly-constructed property) which is subject to a non-ad valorem assessment imposed pursuant to this act, must include the following statement: "THE . . . (name of local government) . . . HAS IMPOSED A NON-ADVALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER ASSESSMENTS PROVIDED FOR BY LAW.

The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.08, F.S., providing for supplemental authority for local governments regarding improvements to real property. See Effect of Proposed Changes.

Section 2. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. See Fiscal Comments.

2. Expenditures:

   Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on the private sector. Being able to secure up-front capital for qualifying improvements at lower interest rates and for a long repayment period, increases the likelihood that property owners will take advantage of the program, which should stimulate the local economy.

D. FISCAL COMMENTS:

The bill provides authority for, but does not require, a local government to adopt a program. The bill does not mandate the manner in which each local government that chooses to participate structures the program. Therefore, the level of funding for the program is left to the discretion of the local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill provides, in s. 163.08(13), F.S., that, "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."

Article I, Section 10, of the Florida Constitution provides, in relevant part, "No...law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws which retroactively burden or alter contractual relations. *In re Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities District v. Volusia County*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto-Owners Ins. Co.,* 363 So.2d 1077 (Fla. 1978).

Not all contractual impairments warrant overturning an otherwise valid law. For example, Contract rights are clearly subject to the state's power of taxation. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980). In *Brooks v. Watchtower Bible and Tract Society of Florida, Inc.*, 706 So.2d 85 (Fla. 4th DCA 1998), the Fourth District Court of Appeal found that a referendum on the sale of city property did not impermissibly impair an existing contract between the city and a prospective purchaser.

State statutes which impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced. *Yellow Cab Co. of Dade County v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982). The court, in *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980), enumerated several factors it might weigh when making such determinations:

1. Whether the law was enacted to deal with a broad economic or social problem;
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill provides, in s. 163.08(1)(c), F.S., that the "Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments or charges, 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."

B. RULE-MAKING AUTHORITY:

This does not require rule-making authority on the state level.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 9, 2010, the Finance and Tax Council adopted a “strike-everything amendment,” that made a number of changes to the bill. This analysis reflects the changes.