

<b>Tab 1</b>	<b>SB 982 by Gruters;</b> (Identical to H 06071) Tax Refund Program for Qualified Target Industry Businesses						
<b>Tab 2</b>	<b>SB 1334 by Boyd;</b> (Similar to CS/H 00917) Excise Tax on Documents						
843122	A	S	RCS	FT, Boyd	Delete L.29:	03/18 11:09 AM	
<b>Tab 3</b>	<b>SB 996 by Garcia (CO-INTRODUCERS) Hutson;</b> (Identical to CS/H 00649) Community Associations						
<b>Tab 4</b>	<b>CS/SB 342 by TR, Diaz;</b> (Identical to CS/H 00621) Vehicle and Vessel Registration						
<b>Tab 5</b>	<b>CS/SB 1208 by CA, Rodriguez (CO-INTRODUCERS) Burgess, Gruters, Polsky;</b> (Compare to CS/H 00387) Property Assessed Clean Energy Program						
902216	D	S	RCS	FT, Rodriguez	Delete everything after	03/18 11:11 AM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**FINANCE AND TAX**  
**Senator Rodriguez, Chair**  
**Senator Cruz, Vice Chair**

**MEETING DATE:** Thursday, March 18, 2021  
**TIME:** 9:00—11:00 a.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Building*

**MEMBERS:** Senator Rodriguez, Chair; Senator Cruz, Vice Chair; Senators Berman, Harrell, Hooper, Jones, Rodrigues, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	<b>SB 982</b> Gruters (Identical H 6071)	Tax Refund Program for Qualified Target Industry Businesses; Deleting a provision prohibiting the certification of applicants after a specified date, etc.  CM     03/09/2021 Favorable FT     03/18/2021 Favorable AP	Favorable Yeas 8 Nays 0
2	<b>SB 1334</b> Boyd (Similar CS/H 917)	Excise Tax on Documents; Providing that modifications of original documents for certain purposes are not renewals and are not subject to document excise taxes, etc.  BI     03/03/2021 Favorable FT     03/18/2021 Fav/CS AP	Fav/CS Yeas 8 Nays 0
3	<b>SB 996</b> Garcia (Identical CS/H 649, Compare S 1998)	Community Associations; Specifying requirements for the contents, delivery, and posting of certain association notices; providing that certain associations have the right to seek judicial review, appeal decisions, and represent unit or parcel owners in certain proceedings; providing and revising the parties considered as the defendants in a tax suit; providing unit or parcel owners' options for defending a tax suit; providing that a condominium association may take certain actions relating to a challenge to ad valorem taxes in its own name or on behalf of unit owners, etc.  RI     03/01/2021 Favorable FT     03/18/2021 Favorable AP	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Finance and Tax

Thursday, March 18, 2021, 9:00—11:00 a.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 342</b> Transportation / Diaz (Identical CS/H 621)	Vehicle and Vessel Registration; Authorizing tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose, etc.  TR 03/03/2021 Fav/CS FT 03/18/2021 Favorable RC	Favorable Yeas 8 Nays 0
5	<b>CS/SB 1208</b> Community Affairs / Rodriguez (Compare CS/H 387)	Property Assessed Clean Energy Program; Revising legislative findings regarding the types of improvements that qualify for specified financing under this act; specifying that a property owner may apply to a PACE program for certain purposes; requiring a qualifying improvement to be affixed or plan to be affixed to specified properties before final funding; requiring a PACE administrator to make specified determinations about a property owner's ability to pay the annual PACE assessment; prohibiting a PACE administrator from offering specified types of financing for residential real properties, etc.  CA 03/10/2021 Fav/CS FT 03/18/2021 Fav/CS AP	Fav/CS Yeas 8 Nays 0

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 982

INTRODUCER: Senator Gruters

SUBJECT: Tax Refund Program for Qualified Target Industry Businesses

DATE: March 17, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 982 reauthorizes the Qualified Target Industry Tax Refund Program by repealing the June 30, 2020, deadline for applicants to be certified for the program.

The Revenue Estimating Conference determined that the bill does not affect state or local revenues because the Qualified Target Industry Tax Refund Program is funded by annual appropriations.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Qualified Target Industry Tax Refund Program**

The Qualified Target Industry (QTI) Tax Refund Program was created by the Legislature in 1994<sup>1</sup> to encourage the creation and retention of high-quality, high-wage jobs by providing a state grant equal to the amount paid for certain state and local taxes<sup>2</sup> to eligible businesses creating jobs in certain target industries.<sup>3</sup> The amount of the tax refund awarded through the program is determined by, among other factors, the number of jobs created by, the average annual wages paid by, and the location of, the eligible business.<sup>4</sup> As of June 30, 2020, no

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<sup>1</sup> Chapter 94-136, s. 76, Laws of Fla.

<sup>2</sup> Tax refunds may be claimed for the following taxes paid: sales and use taxes, corporate income taxes, insurance premium taxes, intangible personal property taxes, excise taxes, ad valorem taxes, certain state communication services taxes, excise taxes on documents. *See* s. 288.106(3)(9), F.S.

<sup>3</sup> Section 288.106(1), F.S.

<sup>4</sup> Section 288.106(3)(b), F.S.

additional applicants may be certified under the program; existing agreements made prior to this date will continue in effect according to their terms.<sup>5</sup>

In order to be eligible to receive a grant, a business must apply to be certified as a qualified target industry business with the Department of Economic Opportunity (DEO).<sup>6</sup> Businesses must be engaged in one of Florida's target industries as identified by the DEO and Enterprise Florida, Inc. (EFI).<sup>7</sup> The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development.<sup>8</sup>

Additionally, a business applying for certification as a qualified target industry business must meet all of the following requirements:

- A business's project must create at least 10 new jobs, or create a net employment increase of at least 10 percent in the case of an expansion of an existing business. The DEO is authorized to waive this requirement for a business in a rural community or an enterprise zone.<sup>9</sup>
- New jobs must pay an annual average wage of at least 115 percent of the average private sector wage in a business's area or the statewide private sector average wage.<sup>10</sup> The DEO may waive this requirement under certain circumstances.<sup>11</sup>
- A business must receive a local funding match, paid by public or private sources, equal to 20 percent of the annual tax refund.<sup>12</sup> The existence of local financial support must be confirmed by a resolution adopted by the governing body of the county or municipality where the business is located.<sup>13</sup> A business located in a brownfield area, a rural city, or a rural community is authorized to exercise an exemption from the local financial support requirement, but the business would not be eligible for more than 80 percent of the total tax refunds originally allowed.<sup>14</sup>

Qualified target industry businesses are eligible to receive a tax refund equal to \$3,000 per newly created job. If a business is located in a rural community or an enterprise zone, the amount is increased to \$6,000 per created job.<sup>15</sup> Qualified target industry businesses may also be eligible for the following additional tax refund payments:<sup>16</sup>

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<sup>5</sup> Section 288.106(9), F.S.

<sup>6</sup> Section 288.106(4), F.S.

<sup>7</sup> Section 288.106(2)(q), F.S. Every three years, beginning January 1, 2011, the DEO must consult with EFI, economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists to review and revise the list of target industries. Target industries are determined according to criteria found in statute.

<sup>8</sup> Florida Department of Economic Opportunity, *2020 Incentives Report*, 12, available at [http://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0\\_2](http://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2) (last visited Mar. 12, 2021).

<sup>9</sup> Section 288.106(4)(b)2., F.S.

<sup>10</sup> Section 288.106(4)(b)1.a., F.S.

<sup>11</sup> See s. 288.106(4)(b)1.b., F.S.

<sup>12</sup> Section 288.106(2)(j), (4)(a)10., F.S.

<sup>13</sup> Section 288.106(4)(a)10., F.S.

<sup>14</sup> Section 288.106(2)(k), F.S., defines the term "local financial support exemption option" for the section. However, the term does not appear elsewhere in that section and the section does not specify how the option is exercised.

<sup>15</sup> Section 288.106(3)(b)1., F.S.

<sup>16</sup> Section 288.106(3)(b), F.S.

- \$1,000 per created job if such jobs pay an average annual wage of at least 150 percent of the average private sector wage in a business's area;
- \$2,000 per created job if such jobs pay an average annual wage of at least 200 percent of the average private sector wage in a business's area;
- \$1,000 per created job if a business's local financial support is equal to the state's incentive award; and
- \$2,000 per created job if a business falls within one of the designated high-impact sectors<sup>17</sup> or increases exports of its goods through a seaport<sup>18</sup> or airport in the state by at least 10 percent by value or tonnage in each of the years the business receives a tax refund payment.

A qualified target industry business cannot receive more than \$1.5 million in any fiscal year, or more than \$2.5 million in any fiscal year if the business is located in an enterprise zone.<sup>19</sup> The total state share of payments under the QTI Tax Refund Program plus under the qualified defense contractor and space flight business tax refund program<sup>20</sup> may not exceed \$35 million.<sup>21</sup>

In Fiscal Year 2019-2020, the last fiscal year during which applicants could be certified under the program, 7,890 jobs were created by 159 businesses actively participating in the program. The total number of jobs created exceeded the number of total new jobs expected to be created by 3,068.<sup>22</sup>

### ***QTI Agreement***

Each qualified target industry business must enter into a written agreement with the DEO that specifies certain criteria that must be met in order to be eligible for a payment, including receipts showing the amount of taxes paid and data showing that the business met its performance requirements.<sup>23</sup> Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year unless the department grants the business an economic recovery extension.<sup>24</sup>

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<sup>17</sup> Pursuant to s. 288.108(6), F.S., EFI must consult with the DEO, economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists every three years, beginning January 1, 2011, to review the designated high-impact sectors. The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, and corporate headquarters. See Department of Economic Opportunity, *2020 Annual Incentives Report*, 52, available at [https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0\\_2](https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2) (last visited Mar. 12, 2021).

<sup>18</sup> Section 288.106(3)(b)4.b., F.S., limits seaports to the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

<sup>19</sup> Section 288.106(3)(c), F.S.

<sup>20</sup> Section 288.1045, F.S.

<sup>21</sup> Section 288.095(3)(a), F.S.

<sup>22</sup> *Supra* note 7, at 7-8.

<sup>23</sup> Section 288.106(5)(a), F.S. The DEO may waive the requirement for proof of taxes paid in future years for a business that provides the DEO with proof that, in a single year, the business has paid an amount of certain state taxes that is at least equal to the total amount of payments that the business would receive through successful completion of its agreement.

Section 288.106(6), F.S.

<sup>24</sup> Section 288.106(5)(b), F.S.

In the event of negative economic conditions in a business's industry, a named hurricane or tropical storm, or specific acts of terrorism, a qualified target industry business may request an economic recovery extension. The request must provide evidence detailing how the aforementioned conditions have prevented a business from carrying out the terms of its agreement.<sup>25</sup> Upon approval, the DEO will renegotiate a business's agreement. Agreements may not be extended for more than 2 years, and a business that receives an extension may not receive a tax refund for the period covered by the extension.<sup>26</sup> Requests for an economic recovery extension were permitted in lieu of any claim scheduled between January 1, 2009, and July 1, 2012.<sup>27</sup>

### **Economic Evaluation of the QTI Tax Refund Program**

The Legislature's Office of Economic and Demographic Research (EDR) and Office of Program Policy Analysis and Government Accountability are required to evaluate, among other economic development programs, the QTI Tax Refund Program every three years.<sup>28</sup> EDR is required to evaluate and determine the economic benefits of the program over the previous three years, and must also evaluate the number of jobs created, the increase or decrease in personal income, and the impact on state gross domestic product from the direct, indirect, and induced effects of the state's investment in the program over the previous three years.<sup>29</sup> The last evaluation was published in January 2020.<sup>30</sup>

The January 2020 report analyzed QTI projects (94 in total) that received a payment from the QTI Tax Refund Program during Fiscal Years 2015-2016, 2016-2017, and 2017-2018.<sup>31</sup> EDR found that the 94 projects received state payments totaling \$12.7 million from QTI during the period.<sup>32</sup> There was an estimated 12,156 new project jobs created with an average annual wage of \$79,020, and the economic activity associated with the capital investment and jobs generated a net increase in state revenues of \$68.04 million.<sup>33</sup> The return on investment calculated for the projects was 4.34, which EDR interprets as \$4.34 in tax revenues received back from each dollar spent by the state.<sup>34</sup> EDR concluded that the return on investment for the QTI Tax Refund Program was robust and stable between 2017 and 2020.<sup>35</sup>

### **III. Effect of Proposed Changes:**

The bill repeals s. 288.106(9), F.S., which prohibits the certification of applicants after June 30, 2020. In effect, the bill permanently reauthorizes the QTI program.

<sup>25</sup> Section 288.106(5)(b)1., F.S.

<sup>26</sup> Section 288.106(5)(b)3., F.S.

<sup>27</sup> Section 288.106(5)(b)1., F.S.

<sup>28</sup> Section 288.0001(2)(a)2., F.S.

<sup>29</sup> Section 288.0001(3), F.S.

<sup>30</sup> Office of Economic and Demographic Research, The Florida Legislature, *Economic Evaluation for Select State Economic Development Incentive Programs*, January 2020, available at <http://edr.state.fl.us/Content/returnoninvestment/ROISELECTPROGRAMS2020final.pdf> (last visited Mar. 12, 2021).

<sup>31</sup> *Id.* at 3, 19.

<sup>32</sup> *Id.* at 19.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 19, 7.

<sup>35</sup> *Id.* at 19. Also see *id.* at 9-10 for EDR's key assumptions for their analysis.

The bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill does not affect state or local revenues because the QTI Tax Refund Program is funded by annual appropriations.

B. Private Sector Impact:

Target industry businesses that are not under an existing tax refund agreement could apply under the QTI Tax Refund Program and, if qualified, receive refunds of corporate income, insurance premium, sales and use, intangible personal property, documentary stamp, ad valorem, and state communications services taxes paid, subject to legislative appropriation for the program.

C. Government Sector Impact:

None.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 288.106 of the Florida Statutes.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

By Senator Gruters

23-01077-21

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A bill to be entitled

An act relating to the tax refund program for qualified target industry businesses; amending s. 288.106, F.S.; deleting a provision prohibiting the certification of applicants after a specified date; providing an effective date.

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

Section 1. Subsection (9) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.-

~~(9) EXPIRATION.-An applicant may not be certified as qualified under this section after June 30, 2020. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.~~

Section 2. This act shall take effect July 1, 2021.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Education, *Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations Subcommittee on Education  
Banking and Insurance  
Commerce and Tourism  
Regulated Industries  
Rules

### JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

### SENATOR JOE GRUTERS

23rd District

March 16, 2021

The Honorable Ana Maria Rodriguez, Chair  
Committee on Finance and Tax  
215 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Rodriguez:

I am writing to request that Senate Bill 982, Tax Refund Program for Qualified Target Industry Businesses to be placed on the agenda of the next Finance and Tax committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: Robert Babin, Staff Director

#### REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2020

Meeting Date

982

Bill Number (if applicable)

Topic SB 982 Tax Refund Program for Qualified Target Industry Businesses

Amendment Barcode (if applicable)

Name Ethan Perry

Job Title Deputy Legislative Affairs Director

Address 107 E Madison St.

Phone 850-245-7109

Street

Tallahassee

FL

32399

Email ethan.perry@deo.myflorida.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Economic Opportunity

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/18/21

*Meeting Date*

982

*Bill Number (if applicable)*

Topic Qualified Targeted Industries

*Amendment Barcode (if applicable)*

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

*Street*

Tallahassee

FL

32301

Email cjohnson@flchamber.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

982

Bill Number (if applicable)

Topic Tax Refund Program for Qualified Targeted Industries

Amendment Barcode (if applicable)

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 South Monroe

Phone (850) 922-4300

Street

Tallahassee

FL

32301

Email bmckee@flcounties.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3-18-21

Meeting Date

982

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-979-7110

Street

Miami

FL

33156

Email jmm2@miamidade.gov

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/18/21

*Meeting Date*

982

*Bill Number (if applicable)*

Topic QTI tax refund program

*Amendment Barcode (if applicable)*

Name Robert Stuart

Job Title Government Consultant

Address 301 S Bronough Street, Suite 600

Phone 850-577-9090

*Street*

Tallahassee

FL

32301

Email robert.stuart@gray-robinson.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Orlando Economic Partnership

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)



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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/18/2021

*Meeting Date*

982

*Bill Number (if applicable)*

Topic Tax Refund Program for Qualified Target Industries

*Amendment Barcode (if applicable)*

Name Jake Felder

Job Title Legislative Affairs Director

Address 101 N Monroe St, Suite 1000

Phone 850-298-6620

*Street*

Tallahassee

FL

32803

Email jfelder@enterpriseflorida.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Enterprise Florida, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/18/2021  
Meeting Date

SB 982  
Bill Number (if applicable)

Topic QTI

Amendment Barcode (if applicable)

Name Lauren Storch

Job Title Government Relations

Address 601 E. Kennedy Blvd.  
Street

Phone 813-245-2675

Tampa FL 33601  
City State Zip

Email Storchla@hccflgov.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Hillsborough County Board of County Commissioners

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/18/2021

*Meeting Date*

982

*Bill Number (if applicable)*

Topic Tax Refund Program for Qualified Target Industry Businesses

*Amendment Barcode (if applicable)*

Name B.D. Jogerst

Job Title Lobbyist

Address 516 N Adams St

Phone 850-224-7173

*Street*

Tallahassee

FL

32301

Email bjogerst@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 1334

INTRODUCER: Finance and Tax Committee and Senator Boyd

SUBJECT: Excise Tax on Documents

DATE: March 18, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1334 provides that a modification of an original document for the sole purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal subject to the documentary stamp tax.

In November 2020, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint statement encouraging banks to cease entering into new contracts that use the London Interbank Offered Rate (LIBOR) as a reference rate by December 31, 2021.

The Revenue Estimating Conference reviewed similar HB 917 and determined that the bill has no fiscal impact, assuming the language is consistent with current law and current administration and the only change to the original document involves the interest rate.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Documentary Stamp Tax**

Florida imposes a documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida and on mortgages, liens, and other evidences of

indebtedness filed or recorded in Florida.<sup>1</sup> The tax comprises two taxes imposed on different bases at different tax rates. The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interests that are granted, assigned, transferred, conveyed or vested in a purchaser,<sup>2</sup> which is imposed on the full amount of the obligation secured thereby.<sup>3</sup> The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, with the tax on promissory notes, wage assignments, and retail charge account agreements capped at \$2,450.<sup>4</sup>

### ***Taxation of Renewals***

Renewals of previously taxed documents are subject to the documentary stamp tax unless an exception or exemption applies.<sup>5</sup> Section 201.08(5), F.S., provides that a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by:

- Adding one or more obligors;
- Increasing the principal balance; or
- Changing the interest rate, maturity date, or payment terms.

Florida provides a tax exemption for the renewal of existing promissory notes and mortgages when the renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness, not including any accumulated interest and “without enlargement in any way of the original contract and obligation.”<sup>6</sup> For a renewal note evidencing a term obligation to qualify for the exemption, the renewal note must be attached to the original promissory note with a certain statutory notation, must be executed by the original obligor, and must renew and extend only the unpaid balance of the original contract and obligation.<sup>7</sup> If the renewal note otherwise meets this criteria but increases the unpaid balance of the original contract, only the face amount of the increase is taxable.<sup>8</sup>

A note given in renewal of an adjustable rate note or mortgage which has an initial interest rate adjustment interval of not less than six months is subject to taxation only to the extent of any accrued interest upon which taxes have not previously been paid.<sup>9</sup>

A Department of Revenue rule implementing sections 201.08 and 201.09, F.S., states: “A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal.”<sup>10</sup> In 2019, the Second District Court of Appeal, in

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<sup>1</sup> Section 201.08(1), F.S.

<sup>2</sup> Section 201.02(1), F.S.

<sup>3</sup> Fla. Admin. Code. R. 12B-4.051 (2003).

<sup>4</sup> Sections 201.07 and 201.08, F.S.

<sup>5</sup> Section 201.08(1)(a) and (b), F.S., specifies the documents that are taxable as well as “for each renewal of the same.”

<sup>6</sup> Section 201.09, F.S.

<sup>7</sup> Section 201.09(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 201.09(3), F.S.

<sup>10</sup> Fla. Admin. Code. R. 12B-4.052(12)(a) (2003).

reviewing whether a modification of an interest rate, a maturity date, or payment terms is taxable, followed the rule's interpretation of the statute.<sup>11</sup>

In addition, section 201.08(5), F.S., expressly provides that the following modifications to documents are not renewals and are not subject to taxation:

- Modifications that do not modify the terms of the indebtedness evidenced, such as those given or recorded to correct an error;
- Modifications to covenants, conditions, or terms unrelated to the debt;
- Severing a lien into separate liens;
- Providing for additional, substitute, or further security for the indebtedness;
- Consolidating indebtedness or collateral;
- Adding, changing, or deleting guarantors; or
- Substituting a new mortgagee or payee.

### **Recent Interest Reference Rate Reforms**

Since 1986, LIBOR has been the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.<sup>12</sup> When two parties enter into a financial contract in which interest payments are to be exchanged, those payments are frequently based on LIBOR, which provides the benchmark rate for the resulting interest rate.<sup>13</sup>

The Federal Reserve Bank of New York estimates that approximately \$200 trillion in financial contracts reference the United States Dollar LIBOR. Although the derivatives market accounts for 95 percent of the outstanding gross notional value of all financial products referring to LIBOR, several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and asset-backed securities reference LIBOR.<sup>14</sup> As of 2019, \$1.2 trillion worth of residential mortgage loans and \$1.3 trillion of consumer loans referenced LIBOR.<sup>15</sup>

LIBOR is calculated each day from an average of estimated borrowing rates reflecting a range of maturities, submitted by 18 international banks. When a participating bank has no transactions to support its submission, it provides estimates instead. LIBOR is calculated in five currencies: UK Pound Sterling, Swiss Franc, Euro, Japanese Yen, and the U.S. Dollar.<sup>16</sup>

LIBOR has come under increasing scrutiny from regulators and financial markets alike following documented patterns of attempted manipulation by participating banks and a sustained decline in

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<sup>11</sup> *Wells Fargo Bank, N.A. v. Ordonez*, 272 So. 3d 859 (Fla. 2d DCA 2019).

<sup>12</sup> Forbes, *What Is Libor And Why Is It Being Abandoned?* (December 16, 2020), <https://www.forbes.com/advisor/investing/what-is-libor/> (last visited March 13, 2021)

<sup>13</sup> Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (October 17, 2019), <https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/> (last visited March 13, 2021).

<sup>14</sup> Federal Reserve Bank of New York, *Alternative Reference Rates Committee: Frequently Asked Questions* (December 18, 2020), <https://www.newyorkfed.org/medialibrary/Microsites/arcc/files/ARRC-faq.pdf> (last visited March 13, 2021).

<sup>15</sup> See note 12.

<sup>16</sup> Board of Governor of the Federal Reserve System, *Statement of Governor Jerome Powell: Reforming U.S. Dollar LIBOR: The Path Forward* (September 04, 2014), <https://www.federalreserve.gov/newsevents/speech/powell20140904a.htm> (last visited March 13, 2021).

unsecured interbank borrowing.<sup>17</sup> Additionally, LIBOR may be ill-suited for most derivatives contracts and secured borrowing because movements in the credit risk component do not accurately reflect the underlying risks of those contracts.<sup>18</sup> Others have noted the declining correlations between LIBOR and total bank funding costs that predate the 2006-2011 financial crises.<sup>19</sup>

### **Adoption of the Secured Overnight Financing Rate**

In 2014, the Board of Governors of the Federal Reserve System commissioned the Alternative Reference Rates Committee (ARRC) to recommend a benchmark interest rate to replace LIBOR for US dollar-denominated debt.<sup>20</sup> The ARRC is comprised of a group of market participants initially convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York, in cooperation with the United States Department of Treasury, United States Commodity Futures Trading Commission, and United States Office of Financial Research.

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to USD LIBOR. SOFR is fully-transaction based, broad measure of the cost of borrowing cash overnights collateralized by U.S. Treasury securities.<sup>21</sup> SOFR is based on transaction data from three segments of the Treasury repurchase market: (1) tri-party repurchase, (2) General Collateral Finance repurchase; and (3) bilateral repurchase transactions clearing through the Fixed Income Clearing Corporation.<sup>22</sup> The Federal Reserve Bank of New York publishes SOFR data daily including SOFR Averages and a SOFR Index.

### **Expected Cessation of LIBOR**

The Financial Conduct Authority (FCA) of the United Kingdom regulates LIBOR.<sup>23</sup> The FCA is indicating that LIBOR is expected to cease after the end of 2021.<sup>24</sup> Accordingly, the FCA is recommending transitions to alternative rates before this date.

In November 2020, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint statement encouraging banks to cease entering into new contracts that use LIBOR as a reference rate by December 31, 2021.<sup>25</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Bowman et al., *How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020),

<https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm> (last visited March 13, 2021).

<sup>20</sup> *See* note 10.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> New York Federal Reserve, *Transition From LIBOR*. <https://www.newyorkfed.org/arrc/sofr-transition> (last visited February 27, 2021).

<sup>24</sup> Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). <https://www.fca.org.uk/markets/libor> (last visited March 13, 2021).

<sup>25</sup> Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf> (last visited March 13, 2021).

According to the United States Securities and Exchange Commission, many legacy contracts have interest rate provisions referencing LIBOR that, when drafted, did not contemplate the permanent discontinuation of LIBOR.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 201.08, F.S., to provide that a modification of an original document for the sole purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal subject to the documentary stamp tax.

**Section 2** provides an effective date of July 1, 2021.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

#### E. Other Constitutional Issues:

None identified.

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<sup>26</sup> United States Securities and Exchange Commission, *Staff Statement on LIBOR Transition*, Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant, July 12, 2019, available at <https://www.sec.gov/news/public-statement/libor-transition> (last visited Mar. 13, 2021).



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference reviewed similar HB 917 and determined that the bill has no fiscal impact, assuming the language is consistent with current law and current administration and the only change involves the interest rate.<sup>27</sup>

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

- Because the purpose of the modification addressed by the bill is to change the reference rate rather than the interest rate, which is variable, the sponsor may consider amending the bill language to read: “A modification of an original document for the sole purpose of changing the reference rate due to the discontinuation of the reference rate in the original document is not a renewal and is not subject to tax pursuant to this section.”
- As described above, under a Department of Revenue rule implementing ss. 201.08 and 201.09, F.S., a renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal.<sup>28</sup> It is unclear whether the bill language would cause a contrary interpretation of s. 201.08, F.S., that a document modification that changes the interest rate is generally taxable.

**VIII. Statutes Affected:**

This bill substantially amends section 201.08 of the Florida Statutes.

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<sup>27</sup> Revenue Estimating Conference analysis of HB 917, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/pdf/page55-56.pdf> (last visited Mar. 13, 2021).

<sup>28</sup> See *supra* note 10.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax on March 18, 2021:**

The CS adds the word “sole” before “purpose” on line 29, limiting the bill’s exception from documentary stamp tax to document modifications for the sole purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2021	.	
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	.	
	.	

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The Committee on Finance and Tax (Boyd) recommended the following:

**Senate Amendment**

Delete line 29  
and insert:  
for the sole purpose of changing the interest rate due to the

By Senator Boyd

21-01681-21

20211334\_\_

1 A bill to be entitled  
 2 An act relating to the excise tax on documents;  
 3 amending s. 201.08, F.S.; providing that modifications  
 4 of original documents for certain purposes are not  
 5 renewals and are not subject to document excise taxes;  
 6 providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Subsection (5) of section 201.08, Florida  
 11 Statutes, is amended to read:  
 12 201.08 Tax on promissory or nonnegotiable notes, written  
 13 obligations to pay money, or assignments of wages or other  
 14 compensation; exception.—  
 15 (5) For purposes of this section, a renewal shall only  
 16 include modifications of an original document which change the  
 17 terms of the indebtedness evidenced by the original document by  
 18 adding one or more obligors, increasing the principal balance,  
 19 or changing the interest rate, maturity date, or payment terms.  
 20 Modifications to documents which do not modify the terms of the  
 21 indebtedness evidenced such as those given or recorded to  
 22 correct error; modify covenants, conditions, or terms unrelated  
 23 to the debt; sever a lien into separate liens; provide for  
 24 additional, substitute, or further security for the  
 25 indebtedness; consolidate indebtedness or collateral; add,  
 26 change, or delete guarantors; or which substitute a new  
 27 mortgagee or payee are not renewals and are not subject to tax  
 28 pursuant to this section. A modification of an original document  
 29 for the purpose of changing the interest rate due to the

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-01681-21

20211334\_\_

30 discontinuation of an index to which the original interest rate  
 31 is referenced is not a renewal and is not subject to tax  
 32 pursuant to this section. If the taxable amount of a mortgage is  
 33 limited by language contained in the mortgage or by the  
 34 application of rules limiting the tax base when there is  
 35 collateral in more than one state, then a modification which  
 36 changes such limitation or tax base shall be taxable only to the  
 37 extent of any increase in the limitation or tax base  
 38 attributable to such modification. This subsection shall not be  
 39 interpreted to exempt from taxation an original mortgage that  
 40 would otherwise be subject to tax pursuant to paragraph (1)(b).  
 41 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Banking and Insurance, *Chair*  
Agriculture  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Criminal Justice  
Judiciary

## JOINT COMMITTEE:

Joint Legislative Auditing Committee

## SENATOR JIM BOYD

21st District

March 4, 2021

Senator Ana Maria Rodriguez  
Committee on Finance and Tax  
215 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair Rodriguez:

I respectfully request that SB 1334: Excise Tax on Documents, be scheduled for a hearing in the Committee on Finance & Tax at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Robert Babin  
Stephanie Bell-Parke

## REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/18/21

Meeting Date

1334

Bill Number (if applicable)

Topic Excise Tax on Documents

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Government Relations

Address 1001 Thomasville Rd  
Street

Phone 209 0061

Tallahassee FL 32303  
City State Zip

Email clarkin@flbankers.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 996

INTRODUCER: Senators Garcia and Hutson

SUBJECT: Community Associations

DATE: March 17, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 996 authorizes condominium and cooperative associations to represent the association’s unit owners in court proceedings that relate to an association’s joint petition to a value adjustment board. An association must provide unit owners with notice of its intent to represent the unit owners’ interests in the court proceedings and advise the unit owners that they may opt out of being represented by the association within 14 days of receiving the notice.

Current law permits a condominium, cooperative, and mobile homeowners’ association to petition the value adjustment board on behalf of the unit owners to challenge the property appraiser’s tax assessment. Current law also permits associations to appeal the decision of the value adjustment board in circuit court. However, an association may not defend unit owners on an appeal by the property appraiser in circuit court.

The Revenue Estimating Conference determined that the bill, in any given year, will result in either no impact or will reduce local government revenues by an indeterminate amount. However, over time, the bill will reduce local government revenue by an indeterminate amount.

The bill provides an effective date of July 1, 2021.

**II. Present Situation:**

**Condominium Associations**

A condominium is a “form of ownership of real property created under ch. 718, F.S.”<sup>1</sup> Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of

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<sup>1</sup> Section 718.103(11), F.S.

the condominium association.<sup>2</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>3</sup> A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.<sup>4</sup> A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>5</sup>

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.<sup>6</sup> Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."<sup>7</sup> The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by unit owners.<sup>8</sup> In litigation, an association's board of directors is in charge of directing attorney actions.<sup>9</sup>

### **Cooperative Associations**

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>10</sup> The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>11</sup>

Section 719.103(12), F.S., defines a "cooperative" to mean:

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<sup>2</sup> See s. 718.103, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 718.104(2), F.S.

<sup>5</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>6</sup> Section 718.303(3), F.S.

<sup>7</sup> Section 718.103(4), F.S.

<sup>8</sup> Section 718.103(2), F.S.

<sup>9</sup> Section 718.103(30), F.S.

<sup>10</sup> See *Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)

<sup>11</sup> See ss. 719.106(1)(g) and 719.107, F.S.



[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

### **Homeowners' Associations in Mobile Home Parks**

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the real property (mobile home lot) from the mobile home park owner. Homeowners in these communities may form a homeowners' association.<sup>12</sup>

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise being collected in the remainder of the lot rental amount and the passing on of the costs was disclosed prior to tenancy.<sup>13</sup>

### **Tax Assessments**

Condominium and cooperative unit owners are assessed yearly ad valorem<sup>14</sup> taxes by the county property appraiser.<sup>15</sup> For condominium and cooperative parcels, ad valorem taxes are assessed on the parcels and not upon the condominium or cooperative property as a whole, and the common elements or area are divided and levied proportionally among individual parcel owners.<sup>16</sup>

Current law permits condominium, cooperative, and homeowners' associations defined in s. 723.075, F.S., (mobile homeowners' associations) to file a single joint petition to the value adjustment board ("VAB") contesting the tax assessment of all units within the community.<sup>17</sup> The condominium, cooperative, or mobile homeowners' associations must provide the unit owner notice of its petition to the VAB and "provide at least 20 days for a unit owner to elect, in writing that his or her unit not be included in the petition."<sup>18</sup> Although the mobile homeowners' associations are entitled to petition the VAB, current law references only "unit owners" in the context of the notice and opt-out requirements for the petition to the VAB. There are no "unit owners" in a homeowners' association.

A decision by the VAB may only be appealed to the circuit court.<sup>19</sup> Current law allows a condominium, cooperative, or mobile homeowners' association to appeal, as a plaintiff, the VAB's decision.<sup>20</sup>

<sup>12</sup> See ss. 723.075 through 723.0791, F.S.

<sup>13</sup> Section 723.031(5)(c), F.S.

<sup>14</sup> Section 192.001(1), F.S., defines the term "ad valorem tax" to mean a tax based upon the assessed value of property.

<sup>15</sup> Section 194.011, F.S.

<sup>16</sup> Sections 718.120(1) and 719.114, F.S.

<sup>17</sup> Section 194.011(3)(e), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 194.171(1), F.S.

<sup>20</sup> See ss. 194.181(1) and (2), F.S.

Under certain circumstances, a property appraiser may appeal a VAB decision to the circuit court.<sup>21</sup> In a recent decision, a Florida court found that if the property appraiser appeals a VAB decision, each unit owner must each defend the suit if the unit owner so chooses; the association may not represent all unit owners in defending the property appraiser's appeal.<sup>22</sup>

### **III. Effect of Proposed Changes:**

#### **Value Adjustment Board Petitions**

The bill amends s. 194.011(3)(e), F.S., to provide that the association's notice of intent to file a joint petition with the VAB must also include a statement that by not opting out of the VAB petition the unit or parcel owners will also be represented by the association in related judicial proceedings, without the unit or parcel owners being named or joined as parties.

The notice must be hand delivered or sent to unit or parcel owners by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.

Additionally, if the association is a condominium association or cooperative association, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner as notices of board meetings.<sup>23</sup>

The bill also reduces from 20 days to 14 days the time an association must give unit or parcel owners to opt out of the association's petition.

The bill also clarifies that the treatment under the bill applies whether the individual property owner is referred to as a unit owner or parcel owner.

The bill provides that the ability of the association to represent the individual property owners in related judicial proceedings is intended to clarify existing law and applies to cases pending on July 1, 2021.

#### **Judicial Appeals**

The bill amends s. 194.181(2), F.S., to provide that, in any case brought by the property appraiser concerning a VAB decision on a single joint petition filed by a condominium or cooperative association, the association is the only required party defendant. The individual unit or parcel owners are not required to be named as parties.

The bill requires condominium and cooperative associations to provide unit or parcel owners a notice of the property appraiser's complaint. The notice must advise the parcel or unit owners that they may elect to:

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<sup>21</sup> See s. 194.036, F.S.

<sup>22</sup> *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, etc., et al.*, 245 So. 3d 869 (Fla. 3d DCA 2018).

<sup>23</sup> See ss. 718.112(2) and 719.106(1), F.S., for the manner in which board meetings must be noticed.

- Retain their own counsel to defend the appeal for their units or parcels;
- Choose not to defend the appeal; or
- Be represented by the association.

The notice of the property appraiser's complaint must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission. However, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings.<sup>24</sup> An association must give unit or parcel owners 14 days to opt out of the association's representation. Unit or parcel owners who do not respond to the association's notice will be represented in the response or answer filed by the association.

Tax collectors will be required to accept payment of the estimated amount in controversy, as determined by the tax collector, as to a specific unit or parcel. Upon the payment, the unit or parcel would be released from any *lis pendens*<sup>25</sup> and the unit or parcel owner may elect to remain in or be dismissed from the action.

### **Condominium Association Powers**

The bill amends s. 718.111(3), F.S., to authorize condominium associations to defend actions pertaining to ad valorem taxation of commonly used facilities or units.

The bill creates s. 718.111(3)(d), F.S., to authorize a condominium association to, in its own name or on behalf of some or all unit owners, institute, file, protest, or maintain any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units, commonly used facilities, or common elements, including any subsequent proceeding, lawsuit, appeal, or other challenge brought by the property appraiser related to units that were the subject of a joint petition. It also provides that the association has the right to represent the interest of the unit owners and the unit owners are not necessary or indispensable parties to the action.

The bill also provides that the amendments related to condominium association powers are intended to clarify existing law and apply to cases pending on July 1, 2021.

### **Effective Date**

The bill provides an effective date of July 1, 2021.

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<sup>24</sup> *Supra* FN 23

<sup>25</sup> "Lis pendens" means a pending lawsuit or a recorded notice in the chain of title that the property is the subject of a matter on litigation. *See* BLACK'S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference determined that the bill, in any given year, will result in either no impact or will reduce local government revenues by an indeterminate amount. However, over time, the bill will reduce local government revenue by an indeterminate amount.

**B. Private Sector Impact:**

A condominium or cooperative association's ability to defend an appeal on behalf of its unit or parcel owners may reduce the burden to such owners who would no longer need to hire private counsel to defend the appeal.

**C. Government Sector Impact:**

Authorizing a property appraiser to only name the association as a party defendant on an appeal against a single joint petition from the VAB may reduce the case load of circuit courts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 194.011, 194.181, and 718.111.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Garcia

37-00991B-21

2021996\_\_

1 A bill to be entitled  
 2 An act relating to community associations; amending s.  
 3 194.011, F.S.; specifying requirements for the  
 4 contents, delivery, and posting of certain association  
 5 notices; providing that certain associations have the  
 6 right to seek judicial review, appeal decisions, and  
 7 represent unit or parcel owners in certain  
 8 proceedings; requiring certain associations to defend  
 9 unit or parcel owners in certain proceedings;  
 10 providing that property appraisers are not required to  
 11 name individual unit or parcel owners as defendants in  
 12 such proceedings; providing applicability; amending s.  
 13 194.181, F.S.; providing and revising the parties  
 14 considered as the defendants in a tax suit; specifying  
 15 requirements for the contents, delivery, and posting  
 16 of certain association notices; providing unit or  
 17 parcel owners' options for defending a tax suit;  
 18 imposing certain actions on unit or parcel owners who  
 19 fail to respond to a specified notice; specifying the  
 20 conditions for releasing a unit or parcel owner from a  
 21 lis pendens related to certain actions; amending s.  
 22 718.111, F.S.; providing that a condominium  
 23 association may take certain actions relating to a  
 24 challenge to ad valorem taxes in its own name or on  
 25 behalf of unit owners; providing applicability;  
 26 providing an effective date.

27  
 28 Be It Enacted by the Legislature of the State of Florida:  
 29

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

37-00991B-21

2021996\_\_

30 Section 1. Paragraph (e) of subsection (3) of section  
 31 194.011, Florida Statutes, is amended to read:  
 32 194.011 Assessment notice; objections to assessments.—  
 33 (3) A petition to the value adjustment board must be in  
 34 substantially the form prescribed by the department.  
 35 Notwithstanding s. 195.022, a county officer may not refuse to  
 36 accept a form provided by the department for this purpose if the  
 37 taxpayer chooses to use it. A petition to the value adjustment  
 38 board must be signed by the taxpayer or be accompanied at the  
 39 time of filing by the taxpayer's written authorization or power  
 40 of attorney, unless the person filing the petition is listed in  
 41 s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a  
 42 petition with a value adjustment board without the taxpayer's  
 43 signature or written authorization by certifying under penalty  
 44 of perjury that he or she has authorization to file the petition  
 45 on behalf of the taxpayer. If a taxpayer notifies the value  
 46 adjustment board that a petition has been filed for the  
 47 taxpayer's property without his or her consent, the value  
 48 adjustment board may require the person filing the petition to  
 49 provide written authorization from the taxpayer authorizing the  
 50 person to proceed with the appeal before a hearing is held. If  
 51 the value adjustment board finds that a person listed in s.  
 52 194.034(1)(a) willfully and knowingly filed a petition that was  
 53 not authorized by the taxpayer, the value adjustment board shall  
 54 require such person to provide the taxpayer's written  
 55 authorization for representation to the value adjustment board  
 56 clerk before any petition filed by that person is heard, for 1  
 57 year after imposition of such requirement by the value  
 58 adjustment board. A power of attorney or written authorization

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59 is valid for 1 assessment year, and a new power of attorney or  
60 written authorization by the taxpayer is required for each  
61 subsequent assessment year. A petition shall also describe the  
62 property by parcel number and shall be filed as follows:

63 (e)1. A condominium association, ~~as defined in s. 718.103,~~  
64 a cooperative association as defined in s. 719.103, or any  
65 homeowners' association as defined in s. 723.075, with approval  
66 of its board of administration or directors, may file with the  
67 value adjustment board a single joint petition on behalf of any  
68 association members who own units or parcels of property which  
69 the property appraiser determines are substantially similar with  
70 respect to location, proximity to amenities, number of rooms,  
71 living area, and condition. The condominium association,  
72 cooperative association, or homeowners' association as defined  
73 in s. 723.075 shall provide the unit or parcel owners with  
74 notice of its intent to petition the value adjustment board. The  
75 notice must include a statement that by not opting out of the  
76 petition, the unit or parcel owner agrees that the association  
77 shall also represent the unit or parcel owner in any related  
78 proceedings, without the unit or parcel owners being named or  
79 joined as parties. Such notice must be hand delivered or sent by  
80 certified mail, return receipt requested, except that such  
81 notice may be electronically transmitted to a unit or parcel  
82 owner who has expressly consented in writing to receiving such  
83 notices by electronic transmission. If the association is a  
84 condominium association or cooperative association, the notice  
85 must also be posted conspicuously on the condominium or  
86 cooperative property in the same manner as notices of board  
87 meetings under ss. 718.112(2) and 719.106(1). Such notice must

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88 ~~and shall~~ provide at least ~~14~~ 20 days for a unit or parcel owner  
89 to elect, in writing, that his or her unit or parcel not be  
90 included in the petition.

91 2. A condominium association as defined in s. 718.103 or a  
92 cooperative association as defined in s. 719.103 which has filed  
93 a single joint petition under this subsection has the right to  
94 seek judicial review or appeal a decision on the single joint  
95 petition and continue to represent the unit or parcel owners  
96 throughout any related proceedings. If the property appraiser  
97 seeks judicial review or appeals a decision on the single joint  
98 petition, the association shall defend the unit or parcel owners  
99 throughout any such related proceedings. The property appraiser  
100 is not required to name the individual unit or parcel owners as  
101 defendants in such proceedings. This subparagraph is intended to  
102 clarify existing law and applies to cases pending on July 1,  
103 2021.

104 Section 2. Subsection (2) of section 194.181, Florida  
105 Statutes, is amended to read:

106 194.181 Parties to a tax suit.—

107 (2) (a) In any case brought by a ~~the~~ taxpayer or a  
108 condominium or cooperative association, as defined in ss.  
109 718.103 and 719.103, respectively, on behalf of some or all unit  
110 or parcel owners, contesting the assessment of any property, the  
111 county property appraiser ~~is a~~ ~~shall be~~ party defendant.

112 (b) Other than as provided in paragraph (c), in any case  
113 brought by the property appraiser under ~~pursuant to~~ s.  
114 194.036(1) (a) or (b), the taxpayer ~~is a~~ ~~shall be~~ party  
115 defendant.

116 (c)1. In any case brought by the property appraiser under

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117 s. 194.036(1) (a) or (b) relating to a value adjustment board  
 118 decision on a single joint petition filed by a condominium or  
 119 cooperative association under s. 194.011(3), the association is  
 120 the only required party defendant. The individual unit or parcel  
 121 owners are not required to be named as parties.

122 2. The condominium or cooperative association must provide  
 123 unit or parcel owners with notice of the property appraiser's  
 124 complaint and advise the unit or parcel owners that they may  
 125 elect to:

126 a. Retain their own counsel to defend the appeal for their  
 127 units or parcels;

128 b. Choose not to defend the appeal; or

129 c. Be represented by the association.

130 3. The notice required in subparagraph 2. must be hand  
 131 delivered or sent by certified mail, return receipt requested,  
 132 except that such notice may be electronically transmitted to a  
 133 unit or parcel owner who has expressly consented in writing to  
 134 receiving such notices through electronic transmission.  
 135 Additionally, the notice must be posted conspicuously on the  
 136 condominium or cooperative property, if applicable, in the same  
 137 manner as notices of board meetings under ss. 718.112(2) and  
 138 719.106(1). The association must provide at least 14 days for a  
 139 unit or parcel owner to respond to the notice. Any unit or  
 140 parcel owner who does not respond to the association's notice  
 141 will be represented by the association.

142 4. If requested by a unit or parcel owner, the tax  
 143 collector shall accept payment of the estimated amount in  
 144 controversy, as determined by the tax collector, as to that unit  
 145 or parcel, whereupon the unit or parcel shall be released from

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146 any lis pendens and the unit or parcel owner may elect to remain  
 147 in or be dismissed from the action.

148 (d) In any case brought by the property appraiser under  
 149 pursuant to s. 194.036(1) (c), the value adjustment board is a  
 150 ~~shall be~~ party defendant.

151 Section 3. Subsection (3) of section 718.111, Florida  
 152 Statutes, is amended to read:

153 718.111 The association.—

154 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,  
 155 SUE, AND BE SUED; CONFLICT OF INTEREST.—

156 (a) The association may contract, sue, or be sued with  
 157 respect to the exercise or nonexercise of its powers. For these  
 158 purposes, the powers of the association include, but are not  
 159 limited to, the maintenance, management, and operation of the  
 160 condominium property.

161 (b) After control of the association is obtained by unit  
 162 owners other than the developer, the association may:

163 1. Institute, maintain, settle, or appeal actions or  
 164 hearings in its name on behalf of all unit owners concerning  
 165 matters of common interest to most or all unit owners,  
 166 including, but not limited to, the common elements; the roof and  
 167 structural components of a building or other improvements;  
 168 mechanical, electrical, and plumbing elements serving an  
 169 improvement or a building; and representations of the developer  
 170 pertaining to any existing or proposed commonly used facilities;

171 2. ~~Protest and protesting~~ Protest ad valorem taxes on commonly used  
 172 facilities and on units; ~~and may~~

173 3. Defend actions pertaining to ad valorem taxation of  
 174 commonly used facilities or units or in eminent domain actions;



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2021996\_\_

175 ~~and ex~~176 4. Bring inverse condemnation actions.

177 (c) If the association has the authority to maintain a  
178 class action, the association may be joined in an action as  
179 representative of that class with reference to litigation and  
180 disputes involving the matters for which the association could  
181 bring a class action.

182 (d) The association, in its own name or on behalf of some  
183 or all unit owners, may institute, file, protest, or maintain  
184 any administrative challenge, lawsuit, appeal, or other  
185 challenge to ad valorem taxes assessed on units, commonly used  
186 facilities, or common elements. In any subsequent proceeding,  
187 lawsuit, appeal, or other challenge brought by the property  
188 appraiser related to units that were the subject of a single  
189 joint petition filed under s. 194.011(3), the association has  
190 the right to represent the interest of the unit owners as  
191 provided in s. 194.011(3)(e)2., and the unit owners are not  
192 necessary or indispensable parties to such actions. This  
193 paragraph is intended to clarify existing law and applies to  
194 cases pending on July 1, 2021.

195 (e) This section does not limit ~~Nothing herein limits~~ any  
196 statutory or common-law right of any individual unit owner or  
197 class of unit owners to bring any action without participation  
198 by the association which may otherwise be available.

199 (f) An association may not hire an attorney who represents  
200 the management company of the association.

201 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ana Maria Rodriguez, Chair  
Committee on Finance and Tax

**Subject:** Committee Agenda Request

**Date:** February 19, 2021

---

I respectfully request that **Senate Bill #996**, relating to Community Associations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Ileana Garcia", written over a horizontal line.

---

Senator Ileana Garcia  
Florida Senate, District 37

THE FLORIDA SENATE  
APPEARANCE RECORD

3-18-21

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

996

Meeting Date

Bill Number (if applicable)

Topic

SB 996

Amendment Barcode (if applicable)

Name

Nelson Diaz

Job Title

Attorney

Address

9155 S. Dadeland Blvd

Phone

305-490-3414

Street

Miami

State

FL

Zip

33156

Email

Diaz@TheSouthernGroup.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Fairness in Taxation

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/SB 342

INTRODUCER: Transportation Committee and Senator Diaz

SUBJECT: Vehicle and Vessel Registration

DATE: March 17, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Vickers</u>	<u>TR</u>	<b>Fav/CS</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 342 provides that a tax collector may exercise his or her authority to contract with a privately owned license plate agent, and may determine any additional service charges that will be collected by the license plate agent. Any additional service charges must be fully itemized and disclosed to a person paying the service charges.

The bill requires the license plate agent to enter into a contract with the tax collector regarding the disclosure of additional service charges.

The bill also requires tax collectors and their approved license plate agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles regarding use of the Florida Real Time Vehicle Information System.

The bill does not affect state or local revenues.

The bill has an effective date of July 1, 2021.

## II. Present Situation:

### Tax Collectors as Agents of the Department of Highway Safety and Motor Vehicles

Sixty-five counties currently have elected tax collectors who are constitutional officers.<sup>1</sup> Broward and Miami-Dade counties currently have appointed tax collectors under each county's charter government.<sup>2</sup>

Chapters 320, 322, and 328, F.S., provide that tax collectors are agents of the Department of Highway Safety and Motor Vehicles (DHSMV) for the limited purposes of providing motor vehicle and driver license services. Specifically, with regards to the issuance of registration certificates, license plates, and validation stickers (motor vehicle services), the tax collectors in the several counties of the state are “authorized agents of the department [DHSMV] ... subject to the requirements of the law.”<sup>3, 4, 5</sup>

As a result of Florida Constitutional Amendment 10 (amending Section 3 of Article III, Sections 4 and 11 of Article IV, and Sections 1 and 6 of Article VIII of the Florida Constitution) that passed in 2018, Volusia, Broward and Miami-Dade County tax collector offices will be elected positions. The tax collector in Volusia County took office in 2021 and the Broward and Miami-Dade County tax collectors will take office in 2025. Currently, the motor vehicle services in these charter counties are predominately provided by private tag agency/license plate agent/license tag agencies/private license plate agencies<sup>6</sup> (collectively referred to as “LPA”) that have an agreement with the county to charge an additional county service fee set by the county commission.<sup>7</sup>

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<sup>1</sup> Volusia County formerly had an appointed tax collector. However, pursuant to s. 1(d), Art. VIII of the State Constitution and effective January 5, 2021, Volusia County has an elected tax collector.

<sup>2</sup> Pursuant to s. 1(d), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.

<sup>3</sup> Section 320.03(1), F.S.

<sup>4</sup> “The tax collector, who acts as the agent of and under the direction and control of the department in the sale of motor vehicle license plates, is not acting as a county officer and the bond required to be posted protects only the department and not the county for other tax revenues received by the collector.” FL AGO 74-101 (Apr. 1, 1974).

<sup>5</sup> *Dealer Tag Agency, Inc. v. First Hillsborough County Auto Tag Agency, Inc.*, 14 So. 3d 1238, 1240 (Fla. 2d DCA 2009). The trial court declared the contract void as a matter of law, because the tax collector established no bid protest procedures as required by Chapter 287, F.S. On appeal, the Second DCA held that the trial court erred, because the tax collector was not an executive branch of the state government bound by Chapters 287 or 120. Instead, the tax collector is a constitutional entity created by Article VIII, Section 1(d) of the Florida Constitution. The court held that “The fact that the Tax Collector is described as an “authorized agent” of the DHSMV for the provisions of section 320.03, F.S., does not make it a state agency for the provisions of chapter 287 and 120.” *Id.* at 1240.

<sup>6</sup> Various combinations of these words are used interchangeably.

<sup>7</sup> In determining the appropriateness of public funding for equipment used by LPAs, the Attorney General noted for purposes of section 320.03, F.S., that “license tag agencies are the agents of the respective county tax collectors....[and that n]o pecuniary benefit inures to such agents or subagents.” (emphasis added) FL AGO 082-81 (Oct. 11, 1982). The opinion goes on saying, “The license tag agencies in question are the agents of the county tax collector and as such subagents of the department....” *Id.*

## Fees for Motor Vehicle Services

Several statutory provisions establish the fees to be charged for various motor vehicle services.<sup>8</sup> Section 320.03(2), F.S., requires the tax collector to remit and account for all money that comes into his or her possession or control by reason of performing the various tag and titles services. Section 320.03(3), F.S., also requires the tax collector to “pay all sums officially received by the officer into the State Treasury no later than 5 working days after the close of the business day in which the officer received the funds.”

All fees for specific services are set by statute, without discretion to increase or lower the fee. For example, s. 320.03(5), F.S., provides that tax collectors are required to charge 50 cents on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System (FRVIS). In addition, the statute requires the tax collector to charge \$1 for each license registration sold, transferred or replaced and requires a \$1.50 fee for each initial and renewal registration of private-use automobiles and certain trucks.<sup>9, 10</sup> The tax collector retains \$2.50 for each application handled in connection with a license plate, mobile home sticker, and registration certificate.<sup>11</sup> The statute also provides that \$1 must be charged for license plate validation stickers, vessel decals and mobile home stickers issued from an automated vending facility or printer dispensing machine and allows the tax collector to impose an additional service charge of up to 50 cents for the transactions that occur in a tax collector’s branch office.<sup>12, 13</sup>

However, in two specific situations, fees in excess of these specific amounts can be charged, but again, it is expressly permitted by statute. In s. 320.03(10)(d), F.S., an authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system, and in s. 320.04(2), F.S., LPAs appointed by the county manager of a charter county which has an appointed tax collector are exempted from the prohibition on charging fees for notary public services in connection with, or incidental to, the issuance of license plates or titles.

A well-known canon of statutory interpretation is “*expressio unius est exclusio alterius*,” which means the expression of one thing implies the exclusion of all others.<sup>14</sup> Because the Legislature has indicated precisely when and how private parties can charge fees beyond the statutory fees set in some areas, it would follow that LPAs cannot charge fees beyond the statutorily mandated fees in any other areas. In other words, the Legislature has determined where a deviation from the statutory fee may occur for certain services provided on behalf of the DHSMV.

## License Plate Agents and Fees

Since a tax collector is acting as an agent for the DHSMV in providing motor vehicle services, when the LPA contracts with the tax collector to provide such state services, it also is acting as

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<sup>8</sup> See ss. 319.32 and 320.08, F.S.

<sup>9</sup> Section 320.03(6), F.S.

<sup>10</sup> Section 320.03(9), F.S.

<sup>11</sup> Section 320.04(1)(a), F.S.

<sup>12</sup> Section 320.04(1)(b), F.S.

<sup>13</sup> Section 320.04(1)(c), F.S.

<sup>14</sup> See, generally, A. Scalia & B. Garner, *Reading Law* (2012).

an agent for the DHSMV.<sup>15</sup> The DHSMV is bound by statute, and therefore lacks authority to allow a tax collector to charge fees in excess of what is provided by statute. In turn, the tax collector, in its role as an agent of the DHSMV, similarly lacks authority to authorize a LPA to charge fees in excess of the statute without express statutory authority.

No statute currently authorizes an additional service fee that may be charged by a LPA or other agent of the state providing a specific motor vehicle service. Several statutes contemplate the use of an LPA that would provide motor vehicle services, but none of these statutes provide any authority for the LPA to charge an additional amount in excess of the fees set by statute.

Sixteen counties have, or have until recently had, contracts with LPAs to operate fifty-seven offices to perform title and registration services for motor vehicles, mobile homes, and vessels, as follows:<sup>16</sup>

- |                    |                   |                           |                  |
|--------------------|-------------------|---------------------------|------------------|
| • Alachua – 1      | • Bay – 1         | • Broward – 7             | • Highlands – 1  |
| • Hillsborough – 1 | • Jefferson – 2   | • Lee – 1 (opens in 2021) | • Leon – 1       |
| • Manatee – 1      | • Miami-Dade – 25 | • Orange – 4              | • Palm Beach – 2 |
| • Pasco – 1        | • Pinellas – 3    | • Polk – 3                | • Volusia - 3    |

The LPAs in Broward and Miami-Dade counties charge (and formerly the LPAs in Volusia County charged) fees for motor vehicle, mobile home, and vessel title and registration services in addition to the statutory fees authorized in ch. 319, 320 and 328, F.S. The additional fees levied in Broward and Miami-Dade counties are levied pursuant to county ordinances and are retained by the LPAs.<sup>17, 18</sup>

The LPAs in counties which have elected tax collectors currently only charge the fees for those services which are expressly authorized in state law. The LPAs in these counties may retain all or a portion of the statutorily authorized service fees tax collectors are allowed for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and each respective tax collector.

LPAs offering optional “concierge” motor vehicle, mobile home, and vessel title and registration services (including supplementary or complementary services not dealt with by statute) to vehicle or vessel dealerships and other motor vehicle related businesses charge additional fees for these services.

The chart below details the additional fees currently charged by the LPA’s in Broward and Miami-Dade counties and that formerly were charged by the LPAs in Volusia County prior to January 5, 2021.<sup>19</sup>

<sup>15</sup> See FL AGO 082-81 (Oct. 11, 1982).

<sup>16</sup> Volusia County’s LPA offices operated prior to the elected Volusia County tax collector taking office on January 5, 2021. Currently, these offices are winding down operations and were to close by February 4, 2021.

<sup>17</sup> The additional fees formerly collected in Volusia County were collected pursuant to the contract between Volusia County and the LPAs that operated in Volusia County.

<sup>18</sup> See, Art. XVII, s. 2-123, Code of Miami-Dade County; Ch. 20, Art. XII, s. 20-251, Code of Broward County.

<sup>19</sup> Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 342*, (January 13, 2021), p. 3 (on file with the Senate Committee on Finance and Tax).

Additional Fees Charged by LPA			
Transaction Type	Broward	Miami-Dade	Volusia
Registration Transaction	\$3.50	\$5.00	\$2.85
Biennial Renewal	\$7.00	\$10.00	\$2.85
Title (original or transfer)	\$15.00	\$18.00	\$12.00
Certificate of Destruction	\$16.00	\$18.00	\$10.00
Duplicate Title	\$6.75	\$8.00	\$2.85
VIN Verification or HIN	\$3.50	\$8.00	\$2.00
Duplicate or corrected registration	\$3.50	\$5.00	\$2.00
Verification of Ownership, lien, tag, decal (not part of title application)	\$3.50	\$4.00	\$0.50
Preparation of affidavits or forms and notarization	N/A	\$3.00	\$0.00
Copies of docs pertaining to MV & vessels	N/A	\$2.00	N/A
Fast title service - additional fees	\$20.00	\$10.00	N/A
Disabled Persons Parking Placards	\$2.00	\$3.00	\$0.50
Temp tag	\$4.00	\$5.00	\$2.00
Dealer Handling Fee (max per transaction - within county)	\$6.75	n/a	\$6.00
Dealer Handling Fee (max per transaction - for other county dealer)	\$25.00	n/a	\$10.00
Print Electronic Title	N/A	\$14.00	\$2.75
Notice of Lien (82139) no title	\$3.50	\$5.00	\$2.00
Assignment of Lien (82139)	\$4.00	\$5.00	\$2.00
Mail receipt - actual cost of postage	Actual Cost	N/A	Actual Cost
Personalize plate reservation	N/A	\$5.00	\$2.85
Personalized plate issuance	N/A	\$5.00	\$0.00
Personalized plate availability	N/A	\$4.00	\$0.00
Registration stop satisfaction	N/A	\$2.00	\$0.00
Registration stop payment	N/A	\$4.00	\$0.00
Email/fax/forms	N/A	\$2.00	\$0.00
OS lienholder letter	N/A	\$9.00	\$0.00
Mark Title Sold	N/A	\$5.00	\$2.85*
Surrender License Plate	N/A	\$5.00	\$2.85
Adding wrecker operator lien	N/A	\$8.00	\$2.85
Satisfying wrecker operator lien	N/A	\$7.00	\$2.85*
N/A - No charge for these specific transactions			
*Charged only if not part of a transaction			

### Florida Real Time Vehicle Information System

The DHSMV maintains the FRVIS which facilitates the collection of taxes and fees for tags, titles, and registrations associated with motor vehicles and vessels.<sup>20</sup> Local tax collector and LPA offices throughout the state process tag, title, and registration transactions through FRVIS.<sup>21</sup> Revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels, together with other sources of the DHSMV's revenue, are distributed through FRVIS to

<sup>20</sup> Department of Highway Safety and Motor Vehicles, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, (April 2014), available at [https://flauditor.gov/pages/pdf\\_files/2014-183.pdf](https://flauditor.gov/pages/pdf_files/2014-183.pdf) (last visited March 12, 2021).

<sup>21</sup> *Id.* at pages 1-2.



various state agencies, including the DHSMV, and non-state entities in accordance with governing Florida Statutes.<sup>22</sup>

Access to FRVIS is governed by written agreement in the form of a memorandum of understanding (MOU) between the DHSMV and tax collectors throughout the state, and if a tax collector has an LPA, by an additional MOU between the DHSMV, the tax collector, and the LPA contracted with the tax collector.<sup>23</sup>

FRVIS is composed of two processing environments. The first is a distributed environment that consists of the servers at local tax collector and tag agent offices that process tag, title, and registration transactions throughout the state. The second environment is the host portion that consists of the back-end processing that is conducted centrally at the DHSMV's primary data center.<sup>24</sup>

In addition to residential street addresses, the DHSMV is authorized to collect and store (in FRVIS) e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.<sup>25, 26, 27, 28, 29</sup>

### ***Related Equipment Requirements***

Currently, any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration issuance to operate that office. The DHSMV periodically refreshes outdated equipment and pays the cost of the new equipment (contingent upon appropriated funds) for both tax collector's and LPA's offices.<sup>30</sup>

LPAs reimburse the DHSMV for reoccurring circuit costs (i.e., Internet access) for each location, unless the LPA office is collocated with a tax collector office and the circuit is shared.<sup>31</sup>

### **III. Effect of Proposed Changes:**

The bill provides that a tax collector may elect to exercise his or her authority to contract with a LPA, and may determine any additional service charges that will be collected by the LPAs approved by the tax collector. Any additional service charges must be fully itemized and disclosed to a person paying the service charges to the LPA.

The bill requires the LPA to enter into a contract with the tax collector regarding the disclosure of additional service charges.

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<sup>22</sup> *Id.*, at page 2.

<sup>23</sup> *Supra* FN 19, p. 3

<sup>24</sup> *Id.*

<sup>25</sup> Section 319.40, F.S.

<sup>26</sup> Section 320.95, F.S.

<sup>27</sup> Section 322.08(10), F.S.

<sup>28</sup> Section 328.30, F.S.

<sup>29</sup> Section 328.80, F.S.

<sup>30</sup> *Supra* FN 19, p. 4.

<sup>31</sup> *Id.*

The bill also requires tax collectors and their approved LPAs to enter into an MOU with the DHSMV regarding use of the FRVIS.

The bill has an effective date of July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Article VII, s. 18 of the State Constitution do not apply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

Article VII, Section 19 of the Florida Constitution requires new or increased taxes or fees to be passed by a two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.<sup>32</sup> A “fee” is defined as “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”<sup>33</sup>

While the above provisions do not apply to local government revenues, to the extent that the additional service charges that will be collected by the LPAs as approved by the tax collector (in this capacity operating as authorized agent of the state) are determined to be new state fees, the requirements of Article VII, s. 19 of the Florida Constitution may apply.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The bill does not affect state or local revenues.

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<sup>32</sup> FLA. CONST. art. VII, s. 19(a).

<sup>33</sup> FLA. CONST. art. VII, s. 19(d)(1).

**B. Private Sector Impact:**

Individuals who elect to use the services of a tax collector approved LPA may incur additional service charges.

To the extent that LPAs provide services which have been approved by the tax collector to charge additional service charges, the LPAs may receive additional revenue.

**C. Government Sector Impact:**

The DHSMV stated that if the bill results in more tax collectors using LPAs or more LPA offices being established to perform motor vehicle, mobile home, and vessel title and registration services, recurring costs for replacement equipment for tax collectors' and LPAs' offices may increase and, potentially, impair the ability of the Highway Safety Operating Trust Fund to cover the refresh rate for equipment in tax collector's offices as well as existing LPAs' offices, which is paid from the Highway Safety Operating Trust Fund.<sup>34</sup>

The DHSMV stated the bill would be a significant impact on the DHSMV's operational resources and resources dedicated to the Motorist Modernization project. Programing would be required in FVRIS to print fees that LPA's would charge on receipts and reports.<sup>35</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not address "off-highway vehicle" titles. An "off-highway vehicle" is not included in the definition of "motor vehicle" in ch. 322, F.S. The definition of "off-highway vehicle" and the fees pertaining to titles for those vehicles are found in ch. 317, F.S. The DHSMV recommends provisions for "off-highway vehicle" be added to the bill.<sup>36</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 319.32, 320.03, 320.04, and 328.72.

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<sup>34</sup> *Supra* FN 19, p. 5-6.

<sup>35</sup> *Ibid*, p. 6.

<sup>36</sup> *Ibid*, p. 7.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Committee on Transportation on March 3, 2021:**

- Clarifies that it is discretionary for tax collectors to exercise their authority to contract with a license plate agent and determine additional service charges collected by privately owned license plate agents for motor vehicle titles.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By the Committee on Transportation; and Senator Diaz

596-02367-21

2021342c1

1 A bill to be entitled  
 2 An act relating to vehicle and vessel registration;  
 3 amending s. 319.32, F.S.; authorizing tax collectors  
 4 to determine service charges collected by privately  
 5 owned license plate agents for motor vehicle titles;  
 6 requiring that additional service charges be itemized  
 7 and disclosed to the person paying them; requiring a  
 8 license plate agent to enter into a contract with the  
 9 tax collector for a certain purpose; amending s.  
 10 320.03, F.S.; requiring tax collectors and approved  
 11 license plate agents to enter into a memorandum of  
 12 understanding with the department for a certain  
 13 purpose; amending s. 320.04, F.S.; authorizing the tax  
 14 collector to determine service charges collected by  
 15 privately owned license plate agents for motor vehicle  
 16 registrations; requiring that additional service  
 17 charges be itemized and disclosed to the person paying  
 18 them; requiring a license plate agent to enter into a  
 19 contract with the tax collector for a certain purpose;  
 20 amending s. 328.72, F.S.; authorizing the tax  
 21 collector to determine service charges collected by  
 22 privately owned license plate agents for vessel  
 23 registrations and titles; requiring that additional  
 24 service charges be itemized and disclosed to the  
 25 person paying them; requiring a license plate agent to  
 26 enter into a contract with the tax collector for a  
 27 certain purpose; providing an effective date.  
 28  
 29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 4

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

596-02367-21

2021342c1

30  
 31 Section 1. Paragraph (c) is added to subsection (2) of  
 32 section 319.32, Florida Statutes, to read:  
 33 319.32 Fees; service charges; disposition.—  
 34 (2)  
 35 (c) If a tax collector elects to exercise his or her  
 36 authority to contract with a license plate agent, the tax  
 37 collector may determine additional service charges to be  
 38 collected by the privately owned license plate agents approved  
 39 by the tax collector. Additional service charges must be fully  
 40 itemized and disclosed to the person paying the service charges  
 41 to the license plate agent. The license plate agent shall enter  
 42 into a contract with the tax collector regarding the disclosure  
 43 of additional service charges.  
 44 Section 2. Subsection (5) of section 320.03, Florida  
 45 Statutes, is amended to read:  
 46 320.03 Registration; duties of tax collectors;  
 47 International Registration Plan.—  
 48 (5) In addition to the fees required under s. 320.08, a fee  
 49 of 50 cents shall be charged on every license registration sold  
 50 to cover the costs of the Florida Real Time Vehicle Information  
 51 System. The fees collected shall be deposited into the Highway  
 52 Safety Operating Trust Fund to be used exclusively to fund the  
 53 system. The fee may only be used to fund the system equipment,  
 54 software, personnel associated with the maintenance and  
 55 programming of the system, and networks used in the offices of  
 56 the county tax collectors as agents of the department and the  
 57 ancillary technology necessary to integrate the system with  
 58 other tax collection systems. The department shall administer

Page 2 of 4

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

596-02367-21

2021342c1

59 this program upon consultation with the Florida Tax Collectors,  
 60 Inc., to ensure that each county tax collector's office is  
 61 technologically equipped and functional for the operation of the  
 62 Florida Real Time Vehicle Information System. Tax collectors and  
 63 their approved license plate agents shall enter into a  
 64 memorandum of understanding with the department regarding use of  
 65 the Florida Real Time Vehicle Information System in accordance  
 66 with paragraph (4) (b). Any designated revenue collected to  
 67 support functions of the county tax collectors and not used in a  
 68 given year must remain exclusively in the trust fund as a  
 69 carryover to the following year.

70 Section 3. Present subsection (3) of section 320.04,  
 71 Florida Statutes, is redesignated as subsection (4), and a new  
 72 subsection (3) is added to that section, to read:

73 320.04 Registration service charge.—

74 (3) If a tax collector elects to exercise his or her  
 75 authority to contract with a license plate agent, the tax  
 76 collector may determine additional service charges to be  
 77 collected by privately owned license plate agents approved by  
 78 the tax collector. Additional service charges must be fully  
 79 itemized and disclosed to the person paying the service charges  
 80 to the license plate agent. The license plate agent shall enter  
 81 into a contract with the tax collector regarding the disclosure  
 82 of additional service charges.

83 Section 4. Subsection (7) of section 328.72, Florida  
 84 Statutes, is amended to read:

85 328.72 Classification; registration; fees and charges;  
 86 surcharge; disposition of fees; fines; marine turtle stickers.—

87 (7) SERVICE FEE.—

596-02367-21

2021342c1

88 (a) In addition to other registration fees, the vessel  
 89 owner shall pay the tax collector a \$2.25 service fee for each  
 90 registration issued, replaced, or renewed. Except as provided in  
 91 subsection (15), all fees, other than the service charge,  
 92 collected by a tax collector must be remitted to the department  
 93 not later than 7 working days following the last day of the week  
 94 in which the money was remitted. Vessels may travel in salt  
 95 water or fresh water.

96 (b) If a tax collector elects to exercise his or her  
 97 authority to contract with a license plate agent, the tax  
 98 collector may determine additional service charges to be  
 99 collected by privately owned license plate agents approved by  
 100 the tax collector. Additional service charges must be fully  
 101 itemized and disclosed to the person paying the service charges  
 102 to the license plate agent. The license plate agent shall enter  
 103 into a contract with the tax collector regarding the disclosure  
 104 of additional service charges.

105 Section 5. This act shall take effect July 1, 2021.



**SENATOR MANNY DIAZ, JR.**  
36th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Health Policy Chair  
Appropriations Subcommittee on  
Education Vice Chair  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Commerce and Tourism  
Rules

March 8, 2021

Honorable Senator Ana Maria Rodriguez  
Chair  
Committee on Finance and Tax

Honorable Chair Rodriguez,

I respectfully request Senate Bill Number 342 Vehicle and Vessel Registration be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in blue ink, appearing to read "M. Diaz", written over a horizontal line.

Senator Manny Diaz, Jr.  
Florida Senate, District 36

CC: Robert Babin, Staff Director  
Lynn Wells, Committee Administrative Assistant  
Lia Duran, Legislative Assistant

REPLY TO:

- 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/18/21  
Meeting Date

SB 342  
Bill Number (if applicable)

Topic Vehicle and Vessel Registration

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title \_\_\_\_\_

Address 124 West Jefferson St.

Phone 222-9075

Tallahassee FL 32312  
City State Zip

Email Andrew@ccfla.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Dealer Services Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/CS/SB 1208

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senator Rodriguez and others

SUBJECT: Property Assessed Clean Energy Program

DATE: March 18, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1208 substantially amends the Property Assessed Clean Energy program, which allows property owners to make qualifying improvements to real property and finance the cost through annual non-ad valorem tax assessments. Qualifying improvements are those that enhance energy efficiency, renewable energy, and wind resistance. The bill names the program the Resiliency Energy Environment Florida program and expands qualifying improvements to include wastewater treatment, flood and water damage mitigation, health and environmental hazards mitigation, and water conservation and efficiency projects.

The bill allows governmental leased property to qualify for the program.

The bill also enhances protections for consumers entering into PACE contracts.

The bill does not affect state or local revenues.

The bill takes effect July 1, 2021.

## II. Present Situation:

### PACE in Florida

In 2010, the Legislature authorized local governments<sup>1</sup> funding of property owner's qualifying improvements and to establish a financing agreement for the repayment of such costs through annual non-ad valorem property tax assessments. Although Florida's law does not use the terms "PACE" or "Property Assessed Clean Energy," it is generally understood that s. 163.08, F.S., is Florida's PACE program.<sup>2</sup>

Through a PACE program, a property owner may apply to a local government for funding to enhance energy conservation and efficiency improvements, such as energy-efficient HVAC systems, replacement of windows, electric vehicle charging equipment, and efficient lighting equipment; renewable energy improvements utilizing hydrogen, solar, geothermal, and wind energy; and wind resistance improvements such as wind-resistant shingles, gable-end bracing, storm shutters, and opening protections.<sup>3</sup>

PACE programs in Florida are formed by local governments and operate typically in partnership with several localities pursuant to an interlocal agreement. Additionally, PACE programs in Florida can be operated by a third-party PACE administrator, which is either a for-profit or not-for-profit entity acting on behalf of the local government.<sup>4</sup> However, it is the local government that enters into a financing agreement directly with the property owner.<sup>5</sup>

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment.<sup>6</sup> The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement ... is not enforceable." However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay for the qualifying improvement.<sup>7</sup>

### *Qualifying Improvements*

The types of projects PACE financing may fund are referred to as "qualifying improvements." A local government may not offer PACE financing for any project not included in the statutory definition of qualifying improvements. As provided in current law, qualifying improvements include the following:

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<sup>1</sup> "Local government" means a county, municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

<sup>2</sup> See generally Erin Deady, *Property Assessed Clean Energy: Is There Finally a Clear Path to Success?* Florida Bar Journal Vol. 90, No. 6, June 2016, pg 114, available at <https://www.floridabar.org/the-florida-bar-journal/property-assessed-clean-energy-is-there-finally-a-clear-path-to-success/> (last accessed March 14, 2021).

<sup>3</sup> Section 163.08(2)(b), F.S.

<sup>4</sup> Section 163.08(6), F.S.

<sup>5</sup> Section 163.08(8), F.S.

<sup>6</sup> Section 163.08(13), F.S.

<sup>7</sup> Section 163.08(15), F.S.

- Energy conservation and efficiency improvements,<sup>8</sup> to include:
  - Air sealing;
  - Installation of insulation;
  - Installation of energy efficient HVAC systems;
  - Building modifications which 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.
- Renewable energy improvements,<sup>9</sup> which means installation of any system in which the electrical, mechanical, or thermal energy is produced from a method utilizing hydrogen, solar energy, geothermal energy, bioenergy, or wind energy.
- Wind resistance improvements,<sup>10</sup> to include
  - 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.

Wind resistance improvements applied to buildings under new construction do not qualify for PACE financing.<sup>11</sup>

### ***Florida PACE Consumer Protections***

Current law provides that, before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments are current and have been paid for the preceding 3 years;
- There are no involuntary liens including construction liens;
- There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years; and
- The property owner is current on all mortgage debt on the property.<sup>12</sup>

Further, any work requiring a license to make a qualifying improvement must be performed by a properly certified or registered contractor.<sup>13</sup> The total amount of PACE assessments for any property may not exceed 20 percent of the property's market value, in most cases.<sup>14</sup>

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<sup>8</sup> Section 163.08(2)(b)1., F.S.

<sup>9</sup> Section 163.08(2)(b)2., F.S.

<sup>10</sup> Section 163.08(2)(b)3., F.S.

<sup>11</sup> Section 163.08(10), F.S.

<sup>12</sup> Section 163.08(9), F.S.

<sup>13</sup> Section 163.08(11), F.S.

<sup>14</sup> Section 163.08(12), F.S.

## Consumer Protections for Residential PACE Financing Generally

Concerns have arisen about issues consumers may face regarding residential PACE financing. Because the PACE financing is structured as a tax assessment instead of a loan, PACE programs historically have not been required to provide homeowners with the same disclosures about the financing costs that traditional lenders must provide.

Additionally, the tax liens for PACE financing take priority over other lien-holders, including the property's mortgage holder.<sup>15</sup> Such priority has influenced Fannie Mae and Freddie Mac to refuse the purchase of loans with existing PACE-based tax assessments,<sup>16</sup> and properties encumbered with PACE obligations are not eligible for Federal Housing Administration insured financing.<sup>17</sup> However, priority lien position protects local governments, who are authorized to take on debt for the financing they provide.<sup>18</sup> Advocates also state that the priority lien position enables local governments to offer competitive interest rates, ranging from approximately 6 to 9 percent.<sup>19</sup>

### *Consumer Financial Protection Bureau Steps*

In 2018, the United States Congress directed the Consumer Financial Protection Bureau (CFPB) to promulgate regulations regarding PACE financing.<sup>20</sup> The CFPB has issued advance notices of proposed rulemaking in order to apply the Truth in Lending Act's ability-to-repay requirements, currently in place for residential mortgage loans, to PACE financing.<sup>21</sup>

The existing federal ability-to-repay requirements prohibit creditors from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance, and assessments.<sup>22</sup> In making such a determination, the creditor must verify and consider specific factors including the consumer's income, assets, and existing debt obligations.<sup>23</sup> The Truth in Lending Act's stated purpose is "to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive."<sup>24</sup>

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<sup>15</sup> Debra Gruszecki, INLAND: Realtors Offer Word of Warning About Solar Financing Program," Jan. 19, 2015, The Press-Enterprise, available at <https://www.pe.com/2015/01/19/inland-realtors-offer-word-of-warning-about-solar-financing-program/> (last accessed March 14, 2021).

<sup>16</sup> FHFA, *Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens* (Dec. 22, 2014) (last visited March 14, 2021).

<sup>17</sup> "ML 2017-18: Property Assessed Clean Energy (PACE)," December 7, 2017, U.S. Department of Housing and Urban Development, available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf> (last accessed March 14, 2021).

<sup>18</sup> Section 163.08(7), F.S.

<sup>19</sup> *AboutPACE*, Florida PACE Funding Agency, available at <https://floridapace.gov/about-pace/> (last visited March 14, 2021).

<sup>20</sup> Section 307, Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law No 115-174 (May 24, 2018).

<sup>21</sup> Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, Docket No. CFPB-2019-0011, available at [https://files.consumerfinance.gov/f/documents/cfpb\\_anpr\\_residential-property-assessed-clean-energy-financing.pdf](https://files.consumerfinance.gov/f/documents/cfpb_anpr_residential-property-assessed-clean-energy-financing.pdf) (last accessed March 14, 2021).

<sup>22</sup> *Id.*, citing TILA section 129C(a), 15 U.S.C. 1639c(a).

<sup>23</sup> *Id.*

<sup>24</sup> 7 TILA section 129B(a)(2), 15 U.S.C. 1639b(a)(2).

The CFPB's regulations on residential PACE financing are still in development and have not been finalized at this time.

### ***California's Consumer Protection Measures***

California, one of the three states currently offering residential PACE financing,<sup>25</sup> has taken measures to protect consumers independent of federal regulation. In 2016, California's law changed to require PACE programs to provide mortgage-level disclosures and to conduct live recorded calls with homeowners to confirm financing terms and obligations.<sup>26</sup>

In 2017, California legislation required that PACE program administrators be licensed by the California Department of Financial Protection and Innovation, provided oversight for contractors and third party solicitors, and authorized the same department to bring enforcement actions against PACE administrators and contractors. The law also required that a PACE administrator thoroughly determine the property owner's ability to repay the loan before approving a financing contract.<sup>27</sup>

### **Wastewater Treatment Improvements**

The Florida Department of Health provides "[o]n-site sewage treatment and disposal systems, commonly referred to as septic systems, are a safe and effective means of wastewater disposal for 30 percent of Florida's population. With an estimated 2.6 million systems in operation, Florida represents 12 percent of the United States' septic systems. Properly designed, constructed, and maintained systems protect Florida's ground water which provides 90 percent of Florida's drinking water."<sup>28</sup>

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.<sup>29</sup> These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of \$15,000 to \$20,000.<sup>30</sup>

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<sup>25</sup> California, Florida, and Missouri are the only three states offering PACE financing on residential property.

<sup>26</sup> James Reed, "Consumer Protections for PACE Now Written into State Law," Orange County Register, October 7, 2016, available at <https://www.oregister.com/2016/10/07/consumer-protections-for-pace-now-written-into-state-law/> (last visited March 14, 2021).

<sup>27</sup> Assembly Bill 1284 (Dababneh, Chap 475, Stats. 2017) – California Financing Law: Property Assessed Clean Energy program: program administrators.

<sup>28</sup> Onsite Sewage, Florida Department of Health, last modified Oct 20, 2020, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last accessed March 14, 2021).

<sup>29</sup> Benita Goldstein, "Failing septic tanks damaging state's environment; will cost billions of dollars to replace," Apr. 22, 2019, South Florida Sun Sentinel, available at <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-septic-tanks-20190422-story.html> (last accessed March 14, 2021).

<sup>30</sup> Terri Lowery, "Cities, Counties Need Plan to Switch Septic to Sewer," May 14, 2016, Florida Today, available at <https://www.floridatoday.com/story/opinion/columnists/guest-columns/2016/05/14/cities-counties-need-plan-switch-septic-sewer/84295648/> (last accessed March 14, 2021).

### III. Effect of Proposed Changes:

The bill substantially amends Florida's Property Assessed Clean Energy (PACE) program. It names the program the Resiliency Energy Environment Florida (REEF) program, defines key terms, expands the types of qualifying improvements, imposes new consumer protections, extends participation in the program to lessees of government property, and enacts new REEF contractor oversight and accountability provisions.

#### Definitions

The bill defines the following terms:

- "Assessment" means the non-ad valorem assessment securing the annual repayment of financing obtained by an owner of commercial real property or residential real property for a qualifying improvement.
- "Assessment financing agreement" means the financing agreement, under a REEF program, between a local government and a property owner for the acquisition or installation of qualifying improvements.
- "Commercial real property" means any property not defined as residential real property that is or will be improved by a qualifying improvement, including, but not limited to, multifamily residential property comprised of five or more units, commercial real property, industrial property, agricultural property, and government leased property.
- "Contractor" means an independent contractor who contracts with a property owner to install qualifying improvements not to the owner of such property.
- "Government leased property" means real property owned by any local government which has become subject to taxation due to lease of the property to a nongovernmental lessee.
- "Nongovernmental lessee" means a person or entity other than a local government which is the lessee of government leased real property.
- "Program administrator" means an entity, including, but not limited to, for-profit or-not-for-profit entities, with whom a local government contracts to administer a REEF program.
- "Residential real property" means a residential property of four or fewer dwelling units which is or will be improved by a qualifying improvement.
- "Resiliency Energy Environment Florida (REEF) program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on commercial real property or residential real property.

#### Qualifying Improvements

The bill amends the definition of "qualifying improvements" to expand the types of projects a local government's REEF program may finance. Significantly, the bill adds the following four new categories of qualifying improvements to the program:

- Wastewater treatment improvements.
- Flood and water damage mitigation and resiliency improvements.
- Health and environmental hazards measure or improvements.
- Water conservation or efficiency improvements.

The “wastewater treatment improvement” category includes the removal, replacement, or improvement of an onsite sewage treatment and disposal system with a secondary or advanced system of the same type, or replacement with a central sewage system. The term includes removal, repairs, or modifications made to an onsite sewage treatment and disposal system regulated by the Department of Health under s. 381.0065, F.S.

The “flood and water damage mitigation and resiliency improvement” category includes projects and installations to:

- Raise a structure above the base flood elevation to reduce flood damage;
- Build or repair a flood diversion apparatus or seawall improvement;
- Utilize flood damage resistant building materials;
- Mitigate or eliminate the potential for microbial growth;
- Use electrical, mechanical, plumbing, or other system improvements to reduce flood damage; and
- Qualify for reductions in flood insurance premiums or reduce repetitive loss such as those recognized by the National Flood Insurance Program, the Community Rating System, the Federal Emergency Management Agency, or other programs related to disaster recovery.

The “health and environmental hazards measures or improvements” category includes measures mitigating or removing:

- The presence of lead, heavy metals, polyfluoroalkyl substance contamination, saltwater intrusion, or other harmful contaminants in potable water systems, to include conversion of well water to municipal water systems, replacement of lead water service lines, and installation of water filters;
- Asbestos;
- Lead paint contamination in housing built before 1978; and
- Indoor air pollution or contaminants, including particulate matter, viruses, bacteria, and mold.

The “water conservation or efficiency improvements” category includes measures or improvements to reduce the usage of water or increase the efficiency of water usage.

Additionally, the bill alters existing qualifying improvement categories to some extent. Within the context of energy conservation and efficiency improvements, the bill adds “installation of battery storage systems” as an allowable improvement, and renames the “wind resistance improvement” category to “wind, storm, and flood resistance improvement” to expand the purpose of already qualifying improvements.

The bill also provides that a REEF contract can cover any qualifying improvements on buildings under new construction, and that REEF financing may be used for refinancing existing loans on qualifying improvements.

## Consumer Protection Measures

To account for recent consumer protection concerns regarding PACE financing, the bill provides regulations aimed at mitigating these concerns and ensuring consumers are well-informed of their obligations before entering into a REEF financing agreement.

Specifically, the bill provides that, before entering into a residential REEF financing agreement, a REEF administrator must reasonably determine that the property owner has the ability to pay the annual REEF assessment. This determination should be based on observations that:

- All property taxes and other assessments are current and have been paid for the preceding 3 years;
- There are no involuntary liens greater than \$1,000 including construction liens;
- There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years;
- The property owner has recorded all other PACE assessments or all PACE assessments have been funded and not yet recorded;
- The property owner is current on all mortgage debt on the property; and
- The property owner is not currently in bankruptcy.

In addition to those measures outlined above, program administrators must comply with the following requirements aimed at enhancing consumer protections for owners of residential real property.

Contracts where the annual assessment is greater than \$4,800 (plus inflation) require the administrator to determine that the total estimated annual payment amount for all REEF assessments on the property does not exceed 10 percent of the property owner's annual household income. Such income should be confirmed by a reputable third party and may not be confirmed solely by the property owner.

Before entering into a residential REEF financing agreement, the REEF administrator must provide a financing estimate and disclosure to the property owner that includes:

- The total amount estimated to be funded including program fees and capitalized interest;
- The estimated annual REEF assessment;
- The term of the REEF assessment;
- The fixed interest charged and estimated annual percentage rate;
- A description of the qualifying improvement;
- A disclosure that if the property owner sells or refinances the property, the property owner may be required to pay off the full amount owed under each REEF financing agreement;
- A disclosure that the REEF assessment will be collected alongside other property taxes, and will result in a lien on the property a lien on the property during the term of the agreement; and
- A disclosure that failure to pay the REEF assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.



The program administrator must also conduct a recorded telephone call with the property owner to confirm the following:

- That the property owner has access to the contract and financing estimates and disclosures;
- The qualifying improvement that is being financed;
- The total estimated annual costs, including fees;
- The total estimated average monthly equivalent amount required to pay such annual costs;
- The estimated date the property owner's first tax payment including the REEF assessment will come due;
- The term of the REEF financing agreement;
- That payments will cause the owner's annual tax bill to increase, that payments will be made through additional annual assessments, and that such payments will be made either directly to the county tax collector's office or through the owner's mortgage escrow account;
- That the owner has disclosed whether the property has received or is seeking additional REEF assessments and has disclosed all other REEF assessments or special taxes about to be placed on the property;
- That the property will be subject to a lien during the term of the REEF financing agreement which may require the contract to be paid in full before selling or refinancing the property;
- That any potential utility or insurance savings are not guaranteed and will not reduce the REEF or total assessment amount; and
- That neither the program administrator nor contractor provide tax advice and that the owner should seek professional tax advice with questions regarding tax credits, deductibility, or other impacts of the qualifying improvement or REEF financing agreement.

A property owner may cancel the REEF financing agreement within three business days after signing the contract, without financial penalty.

The term of a REEF financing agreement may not exceed the useful life of the qualifying improvement being installed or the weighted average useful life of all qualifying improvements being financed, if multiple improvements exist. The financing term may not exceed 30 years. Additionally, a program administrator may not offer a REEF financing agreement on any residential real property that includes a negative amortization schedule, a balloon payment, or prepayment fees other than nominal administrative costs.

### **PACE Contractor Oversight**

The bill provides that for residential real property, a program administrator may not enroll a contractor unless the administrator makes a reasonable effort to review the contractor's professional standing. This includes reviewing the appropriate licensure, permits, and registrations required for its business operations. Additionally, the administrator must obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws to include advertising and marketing laws and regulations.

Further, the bill requires a program administrator to maintain a process to enroll new contractors that includes reasonable review of each contractor's relevant work or project history, financial and reputational background, criminal background, and status on Better Business Bureau or other online platform tracking contractor reviews. A program administrator may rely on a background

check conducted by the Florida Department of Business and Professional Regulation Construction Industry Licensing Board to comply with the criminal background check.

Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must confirm that the applicable work or service has been completed. This is accomplished through either written or telephonic certification with the property owner, or through a third-party site inspection.

A program administrator may not disclose to a contractor or third party solicitor the maximum financing amount for which a residential real property owner is eligible.

A contractor should not present a higher price for a qualifying improvement on residential real property financed by a REEF financing agreement than the contractor would otherwise present were the improvement not financed by REEF.

Finally, the bill imposes certain marketing and communications guidelines for program administrators and contractors to follow. Under these provisions, program administrators and contractors may not suggest that REEF financing is a government assistance program, that qualifying improvements are free or that REEF is a free program, or that utilizing REEF financing does not require the homeowner to repay the financial obligation. A program administrator or contractor may not make representations as to the tax deductibility of a REEF financing agreement on residential real property. They may only encourage a property owner to seek the advice of a tax professional.

Residential property owned by a business entity is exempt from the enhanced consumer protection measures if the business owns two or more residential properties and the properties are not used as a residence of the businesses owners.

### **Government Leased Property**

REEF financing agreements must be executed by either the local government and the lessee or if only by the lessee, the local government must provide written consent to the program administrator.

The financing agreement must state that the lessee is the only party obligated to pay the assessment. A delinquent assessment will not become a lien but will constitute a debt due and is recoverable by legal action or tax executions that lien other property of the lessees that may be located in any county in Florida. In addition, the occupational license or corporate charter of the lessee will be revoked.<sup>31</sup>

The assessment financing agreement's term may not exceed the lesser of:

- The useful life of the qualifying improvement, the weighted average life of multiple qualifying improvements, or the useful life of the qualifying improvements to which the greatest portion of funds are disbursed;
- The remaining term of the lease on the government leased property; or

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<sup>31</sup> Section 196.199(8), F.S.

- Thirty years.

The bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The bill does not affect state or local revenue.

##### **B. Private Sector Impact:**

Property owners who live within a jurisdiction that offers REEF financing may apply for additional types of qualifying improvements under the program.

##### **C. Government Sector Impact:**

REEF programs are designed to be budget-neutral for local governments. As such, no government sector impact is expected for this bill.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.08 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax on March 18, 2021:**

The CS:

- Renames the program from the Property Assessed Clean Energy (PACE) program to the Resiliency Energy Environment Florida (REEF) program and makes conforming changes throughout.
- Adds provisions to administer the program to lessees of government property, including definitions for government leased property and nongovernmental lessees.
- Exempts residential property owned by business entities from the protections afforded to residential properties if the business owns two or more properties and the properties are not residences for the businesses owners.
- Allows a property owner with existing involuntary liens on the property to receive REEF financing if the existing liens total is no greater than \$1,000.
- Makes other technical changes.

**CS by Community Affairs on March 10, 2021:**

The committee substitute removes an incorrect reference to the Florida Construction and makes other minor grammatical changes.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2021	.	
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The Committee on Finance and Tax (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (1), (2), (4), (6) through (10),  
(12), (13), and (14) of section 163.08, Florida Statutes, are  
amended, and subsections (17) through (27) are added to that  
section, to read:

163.08 Supplemental authority for improvements to real  
property.—



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11           (1) (a) In chapter 2008-227, Laws of Florida, the  
12 Legislature amended the energy goal of the state comprehensive  
13 plan to provide, in part, that the state shall reduce its energy  
14 requirements through enhanced conservation and efficiency  
15 measures in all end-use sectors and reduce atmospheric carbon  
16 dioxide by promoting an increased use of renewable energy  
17 resources. That act also declared it the public policy of the  
18 state to play a leading role in developing and instituting  
19 energy management programs that promote energy conservation,  
20 energy security, and the reduction of greenhouse gases. In  
21 addition to establishing policies to promote the use of  
22 renewable energy, the Legislature provided for a schedule of  
23 increases in energy performance of buildings subject to the  
24 Florida Energy Efficiency Code for Building Construction. In  
25 chapter 2008-191, Laws of Florida, the Legislature adopted new  
26 energy conservation and greenhouse gas reduction comprehensive  
27 planning requirements for local governments. In the 2008 general  
28 election, the voters of this state approved a constitutional  
29 amendment authorizing the Legislature, by general law, to  
30 prohibit consideration of any change or improvement made for the  
31 purpose of improving a property's resistance to wind damage or  
32 the installation of a renewable energy source device in the  
33 determination of the assessed value of residential real  
34 property.

35           (b) The Legislature finds that all energy-consuming-  
36 improved properties that are not using energy conservation  
37 strategies contribute to the burden affecting all improved  
38 property resulting from fossil fuel energy production. Improved  
39 property that has been retrofitted with energy-related



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40 qualifying improvements receives the special benefit of  
41 alleviating the property's burden from energy consumption. All  
42 improved properties not protected from wind or flood damage by  
43 wind or flood resistant ~~resistance~~ qualifying improvements  
44 contribute to the burden affecting all improved property  
45 resulting from potential wind or flood damage. Improved property  
46 that has been retrofitted with wind or flood resistant  
47 ~~resistance~~ qualifying improvements receives the special benefit  
48 of reducing the property's burden from potential wind or flood  
49 damage. Further, the installation and operation of qualifying  
50 improvements not only benefit the affected properties for which  
51 the improvements are made, but also assist in fulfilling the  
52 goals of the state's energy and hurricane mitigation policies.

53 (c) Properties that do not use secondary or advanced  
54 technologies for wastewater treatment and disposal contribute to  
55 the water quality problems affecting the state and particularly  
56 the coastal areas. Improved properties that have been  
57 retrofitted with secondary or advanced onsite wastewater  
58 treatment systems or have converted to central sewerage  
59 significantly benefit the quality of water that may enter  
60 streams, lakes, rivers, aquifers, canals, estuaries, or coastal  
61 areas. Properties that are not protected from harmful  
62 environmental health hazards contribute to the environmental  
63 health burdens affecting the state. Properties that have been  
64 improved to mitigate against or prevent environmental health  
65 hazards benefit the general environmental health of the people  
66 within this state.

67 (d) In order to make qualifying improvements more  
68 affordable and assist property owners who wish to undertake such



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69 improvements, the Legislature finds that there is a compelling  
70 state interest in enabling property owners to voluntarily  
71 finance such improvements with local government assistance.

72 (e)~~(e)~~ The Legislature determines that the actions  
73 authorized under this section, including, but not limited to,  
74 the financing of qualifying improvements through the execution  
75 of assessment financing agreements and the related imposition of  
76 voluntary assessments are reasonable and necessary to serve and  
77 achieve a compelling state interest and are necessary for the  
78 prosperity and welfare of the state and its property owners and  
79 inhabitants.

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

81 (a) "Assessment" means the non-ad valorem assessment  
82 securing the annual repayment of financing obtained by an owner  
83 of commercial real property or residential real property for a  
84 qualifying improvement under this chapter.

85 (b) "Assessment financing agreement" means the financing  
86 agreement, under a REEF program, between a local government and  
87 a property owner for the acquisition or installation of  
88 qualifying improvements.

89 (c) "Commercial real property" means any property not  
90 defined as a residential real property which will be or is  
91 improved by a qualifying improvement, including, but not limited  
92 to, the following:

93 1. A multifamily residential property composed of five or  
94 more dwelling units.

95 2. A commercial real property.

96 3. An industrial building or property.

97 4. An agricultural property.





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98           5. A government leased property.

99           (d) "Contractor" means an independent contractor who  
100 contracts with a property owner to install qualifying  
101 improvements on real property and is not the owner of such  
102 property.

103           (e) "Government leased property" means real property owned  
104 by any local government which has become subject to taxation due  
105 to lease of the property to a nongovernmental lessee.

106           (f) ~~(a)~~ "Local government" means a county, a municipality, a  
107 dependent special district as defined in s. 189.012, or a  
108 separate legal entity created pursuant to s. 163.01(7).

109           (g) "Nongovernmental lessee" means a person or entity other  
110 than a local government which is the lessee of government leased  
111 real property.

112           (h) "Program administrator" means an entity, including, but  
113 not limited to, for-profit or not-for-profit entities, with whom  
114 a local government contracts to administer a REEF program.

115           (i) ~~(b)~~ "Qualifying improvement" includes any:

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



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

132           3. Wind, storm, and flood resistance improvement, which  
133 includes, but is not limited to:

134           a. Improving the strength of the roof deck attachment.~~†~~

135           b. Creating a secondary water barrier to prevent water  
136 intrusion.~~†~~

137           c. Installing wind-resistant shingles.~~†~~

138           d. Installing gable-end bracing.~~†~~

139           e. Reinforcing roof-to-wall connections.~~†~~

140           f. Installing storm shutters.~~†~~~~or~~

141           g. Installing opening protections.

142           h. Installing backup power or battery storage systems.

143           4. Wastewater treatment improvement, which includes the  
144 removal, replacement, or improvement of an onsite sewage  
145 treatment and disposal system with a secondary or advanced  
146 onsite treatment and disposal system or technology or the  
147 replacement of an onsite sewage treatment and disposal system  
148 with a central sewage system. For purposes of this section, the  
149 term "wastewater treatment improvement" includes removal,  
150 repairs, or modifications made to an onsite sewage treatment and  
151 disposal system under s. 381.0065.

152           5. Flood and water damage mitigation and resiliency  
153 improvement, which includes, but is not limited to, projects and  
154 installations:

155           a. To raise a structure above the base flood elevation to



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156 reduce flood damage.  
157       b. To build or repair a flood diversion apparatus or  
158 seawall improvement, which includes, but is not limited to,  
159 seawall repairs, caps, and replacements; banks; berms; green-  
160 grey infrastructure; upland stem walls; or other infrastructure  
161 that impedes tidal waters from flowing onto adjacent property or  
162 public rights-of-way.  
163       c. That use flood damage resistant building materials.  
164       d. That mitigate or eliminate the potential for microbial  
165 growth.  
166       e. That use electrical, mechanical, plumbing, or other  
167 system improvements to reduce flood damage.  
168       f. That may qualify for reductions in flood insurance  
169 premiums or reduce repetitive loss such as those recognized by  
170 the National Flood Insurance Program, the Community Rating  
171 System, the Federal Emergency Management Agency, or other  
172 programs, including, but not limited to, those related to  
173 disaster recovery.  
174       6. Health and environmental hazards measure or improvement,  
175 which is a measure or an improvement intended to mitigate  
176 harmful health and environmental hazards to property occupants,  
177 including measures or improvements that mitigate or remove:  
178       a. The presence of lead, heavy metals, polyfluoroalkyl  
179 substance contamination, saltwater intrusion, or other harmful  
180 contaminants in potable water systems. Improvements may include  
181 conversion of well water to municipal water systems, replacement  
182 of lead water service lines, or installation of water filters.  
183       b. Asbestos.  
184       c. Lead paint contamination in housing built before 1978.



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185 d. Indoor air pollution or contaminants, including  
186 particulate matter, viruses, bacteria, and mold.

187 7. Water conservation or efficiency improvement, which is a  
188 measure or improvement to reduce the usage of water or increase  
189 the efficiency of water usage.

190 (j) "Residential real property" means a residential  
191 property of four or fewer dwelling units which is or will be  
192 improved by a qualifying improvement.

193 (k) "Resiliency Energy Environment Florida (REEF) program"  
194 means a program established by a local government, alone or in  
195 partnership with other local governments or a program  
196 administrator, to finance qualifying improvements on commercial  
197 real property or residential real property.

198 (4) Subject to local government ordinance or resolution, a  
199 property owner may apply to a REEF program ~~the local government~~  
200 for funding to finance a qualifying improvement and enter into  
201 an assessment ~~a~~ financing agreement with the local government.  
202 Costs incurred by the REEF program ~~local government~~ for such  
203 purpose may be collected as a non-ad valorem assessment. A non-  
204 ad valorem assessment shall be collected pursuant to s. 197.3632  
205 and, notwithstanding s. 197.3632(8)(a), is ~~shall~~ not ~~be~~ subject  
206 to a discount for early payment. However, the notice and  
207 adoption requirements of s. 197.3632(4) do not apply if this  
208 section is used and complied with, and the intent resolution,  
209 publication of notice, and mailed notices to the property  
210 appraiser, tax collector, and Department of Revenue required by  
211 s. 197.3632(3)(a) may be provided on or before August 15 in  
212 conjunction with any non-ad valorem assessment authorized by  
213 this section, if the property appraiser, tax collector, and



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214 local government agree.

215 (6) A local government may enter into an agreement with a  
216 program administrator to administer a REEF program ~~A qualifying~~  
217 ~~improvement program may be administered by a for-profit entity~~  
218 ~~or a not-for-profit organization on behalf of and at the~~  
219 ~~discretion of the local government.~~

220 (7) A local government may incur debt for the purpose of  
221 providing financing for the ~~such~~ improvements, which is payable  
222 from revenues received from the improved property, or any other  
223 available revenue source authorized by law.

224 (8) A local government may enter into an assessment ~~a~~  
225 financing agreement to finance or refinance a qualifying  
226 improvement only with the record owner of the affected property.  
227 Any assessment financing agreement entered into pursuant to this  
228 section or a summary memorandum of such agreement shall be  
229 submitted for recording ~~recorded~~ in the public records of the  
230 county within which the property is located by the ~~sponsoring~~  
231 ~~unit of~~ local government within 5 days after execution of the  
232 agreement. The recorded agreement shall provide constructive  
233 notice that the assessment to be levied on the property  
234 constitutes a lien of equal dignity to county taxes and  
235 assessments from the date of recordation.

236 (9) Before entering into an assessment ~~a~~ financing  
237 agreement, the local government or the program administrator  
238 acting on its behalf shall reasonably determine that:

239 (a) All property taxes and any other assessments levied on  
240 the same bill as property taxes are current and have been paid  
241 ~~and have not been delinquent~~ for the preceding 3 years or the  
242 property owner's period of ownership, whichever is less;



243        (b) That There are no involuntary liens greater than  
244 \$1,000, including, but not limited to, construction liens on the  
245 property;

246        (c) That No notices of default or other evidence of  
247 property-based debt delinquency have been recorded and not  
248 released during the preceding 3 years or the property owner's  
249 period of ownership, whichever is less;

250        (d) The local government or program administrator has asked  
251 the property owner whether any other assessments have been  
252 recorded or that have been funded and not yet recorded on the  
253 property; and

254        (e) That The property owner is current on all mortgage debt  
255 on the property.

256        (10) Before final funding, a qualifying improvement must  
257 shall be affixed or plan to be affixed to a commercial or  
258 residential real building or facility that is part of the  
259 property and shall constitute an improvement to that property  
260 the building or facility or a fixture attached to the building  
261 or facility. An assessment financing agreement An agreement  
262 between a local government and a qualifying property owner may  
263 not cover qualifying wind-resistance improvements on commercial  
264 or residential real properties in buildings or facilities under  
265 new construction or construction for which a certificate of  
266 occupancy or similar evidence of substantial completion of new  
267 construction or improvement has not been issued.

268        (12) (a) Without the consent of the holders or loan  
269 servicers of any mortgage encumbering or otherwise secured by  
270 the property, the total amount of any non-ad valorem assessment  
271 for a property under this section may not exceed 20 percent of



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272 the just value of the property as determined by the county  
273 property appraiser.

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

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

299 (14) At or before the time a purchaser executes a contract  
300 for the sale and purchase of any property for which a non-ad



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301 valorem assessment has been levied under this section and has an  
302 unpaid balance due, the seller must ~~shall~~ give the prospective  
303 purchaser a written disclosure statement in the following form,  
304 which shall be set forth in the contract or in a separate  
305 writing:

306  
307 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,  
308 RENEWABLE ENERGY, FLOOD MITIGATION, ~~OR~~ WIND OR STORM  
309 RESILIENCE, ADVANCED TECHNOLOGIES FOR WASTEWATER  
310 TREATMENT, ENVIRONMENTAL HEALTH, OR WATER CONSERVATION  
311 ~~RESISTANCE~~.—The property being purchased is located  
312 within the jurisdiction of a local government that has  
313 placed an assessment on the property pursuant to s.  
314 163.08, Florida Statutes. The assessment is for a  
315 qualifying improvement to the property relating to  
316 energy efficiency, renewable energy, flood mitigation,  
317 ~~or~~ wind or storm resilience, advanced technologies for  
318 wastewater treatment, environmental health, or water  
319 conservation resistance, and is not based on the value  
320 of property. You are encouraged to contact the county  
321 property appraiser's office to learn more about this  
322 and other assessments that may be provided by law.

323  
324 (17) Before entering into an assessment financing agreement  
325 for a qualifying improvement on a residential real property, a  
326 program administrator must reasonably determine that the  
327 property owner has an ability to pay the estimated annual  
328 assessment based, at a minimum, on the following:

329 (a) For property owners seeking financing where the total





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330 estimated annual payment amount of all assessments authorized  
331 under this section on the property is \$4,800 or less, or the  
332 equivalent of \$400 per month, the program administrator, at a  
333 minimum, must use the underwriting requirements in subsection  
334 (9) and confirm the property owner is not currently in  
335 bankruptcy in determining whether the property owner has a  
336 reasonable ability to pay the assessment. A program  
337 administrator shall annually recalculate the \$4,800 limit to  
338 account for the rate of inflation established by the United  
339 States Bureau of Labor Statistics' Consumer Price Index for All  
340 Urban Consumers (CPI-U), using the prior year 12-month average  
341 of the CPI-U, at an appropriate time following the release of  
342 the December CPI-U data from that prior year.

343 (b) For property owners seeking financing where the total  
344 estimated annual payment amount of all assessments authorized  
345 under this section on the property is greater than \$4,800, or  
346 the equivalent of \$400 per month, the program administrator, at  
347 a minimum, must use the underwriting requirements in subsection  
348 (9), to confirm that the property owner is not in bankruptcy and  
349 determine that the total estimated annual payment amount for all  
350 the assessment financing agreements authorized under this  
351 section on the property does not exceed 10 percent of the  
352 property owner's annual household income. Income may be  
353 confirmed using information gathered from reputable third-  
354 parties that provide reasonably reliable evidence of the  
355 property owner's household income. Income may not be confirmed  
356 solely from a property owner's statement. A program  
357 administrator shall annually recalculate the \$4,800 limit to  
358 account for the rate of inflation established by the United



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359 States Bureau of Labor Statistics' Consumer Price Index for All  
360 Urban Consumers (CPI-U), using the prior year 12-month average  
361 of the CPI-U, at an appropriate time following the release of  
362 the December CPI-U data from that prior year.

363 (18) Before an assessment financing agreement is entered  
364 into for a qualifying improvement on a residential real  
365 property, the program administrator must:

366 (a) Provide a financing estimate and disclosure to the  
367 residential real property owner which includes all of the  
368 following:

369 1. The total amount estimated to be funded, including the  
370 cost of the qualifying improvements, program fees, and  
371 capitalized interest, if any.

372 2. The estimated annual assessment.

373 3. The term of the assessment.

374 4. The fixed interest charged and estimated annual  
375 percentage rate.

376 5. A description of the qualifying improvement.

377 6. A disclosure that if the property owner sells or  
378 refinances the property, the property owner, as a condition of  
379 the sale or the refinance, may be required by a mortgage lender  
380 to pay off the full amount owed under each assessment financing  
381 agreement.

382 7. A disclosure that the assessment will be collected along  
383 with the property owner's property taxes and will result in a  
384 lien on the property from the date the assessment financing  
385 agreement is executed.

386 8. A disclosure that failure to pay the assessment may  
387 result in penalties and fees, along with the issuance of a tax



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388 certificate that could result in the property owner losing the  
389 real property.

390 (b) Conduct, with a residential real property owner or an  
391 authorized representative, an oral, recorded telephone call  
392 during which time the program administrator must use plain  
393 language. The program administrator must ask the residential  
394 real property owner if he or she would like to communicate  
395 primarily in a language other than English. A program  
396 administrator may not leave a voicemail to the residential real  
397 property owner to satisfy this requirement. A program  
398 administrator, as part of such telephone call, must confirm all  
399 of the following with the residential real property owner:

400 1. That at least one residential real property owner has  
401 access to a copy of the assessment financing agreement and  
402 financing estimates and disclosures.

403 2. The qualifying improvement that is being financed.

404 3. The total estimated annual costs that the residential  
405 real property owner will have to pay under the assessment  
406 financing agreement, including applicable fees.

407 4. The total estimated average monthly equivalent amount of  
408 funds the residential real property owner would have to save in  
409 order to pay the annual costs of the assessment, including  
410 applicable fees.

411 5. The estimated date the residential real property owner's  
412 first property tax payment that includes the assessment will be  
413 due.

414 6. The term of the assessment financing agreement.

415 7. That payments for the assessment financing agreement  
416 will cause the residential real property owner's annual tax bill



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417 to increase and that payments will be made through an additional  
418 annual assessment on the property and will be paid either  
419 directly to the county tax collector's office as part of the  
420 total annual secured property tax bill or may be paid through  
421 the residential real property owner's mortgage escrow account.

422 8. That the qualifying residential property owner has  
423 disclosed whether the property has received or is seeking  
424 additional assessments authorized under this section and has  
425 disclosed all other assessments or special taxes that are or are  
426 about to be placed on the property.

427 9. That the property will be subject to a lien during the  
428 term of the assessment financing agreement and that the  
429 obligations under the agreement may be required to be paid in  
430 full before the residential real property owner sells or  
431 refinances the property.

432 10. That any potential utility or insurance savings are not  
433 guaranteed and will not reduce the assessment or total  
434 assessment amount.

435 11. That the program administrator or contractor do not  
436 provide tax advice and that the residential real property owner  
437 should seek professional tax advice if he or she has questions  
438 regarding tax credits, tax deductibility, or other tax impacts  
439 of the qualifying improvement or the assessment financing  
440 agreement.

441 (19) The residential real property owner may cancel the  
442 assessment financing agreement within 3 business days after  
443 signing the assessment financing agreement without any financial  
444 penalty for doing so.

445 (20) The term of an assessment financing agreement on



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446 residential real property may not exceed:  
447 (a) The estimated useful life of the qualifying improvement  
448 being installed if one improvement is being financed; or  
449 (b) Either the weighted average estimated useful life of  
450 all qualifying improvements being financed or the estimated  
451 useful life of the qualifying improvements to which the greatest  
452 portion of funds are disbursed if multiple qualifying  
453 improvements are being financed.  
454  
455 A financing term on residential real property may not exceed 30  
456 years.  
457 (21) A program administrator may not offer assessment  
458 financing on any residential real property if the financing  
459 includes any of the following:  
460 (a) A negative amortization schedule;  
461 (b) A balloon payment; or  
462 (c) Prepayment fees, other than nominal administrative  
463 costs.  
464 (22) For residential real property, a program  
465 administrator:  
466 (a) May not enroll a contractor who offers assessment  
467 financing on residential real property unless:  
468 1. The program administrator makes a reasonable effort to  
469 review that the contractor maintains in good standing an  
470 appropriate license from the state, if applicable, as well as  
471 any other permits, licenses, or registrations required for  
472 engaging in business in the jurisdiction in which it operates  
473 and that the contractor maintains all state required bond and  
474 insurance coverage.



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475           2. The program administrator obtains the contractor's  
476 written agreement that the contractor will act in accordance  
477 with all applicable laws, including applicable advertising and  
478 marketing laws and regulations.

479           (b) Must maintain a process to enroll new contractors which  
480 includes reasonable review of the following for each contractor:

481           1. Relevant work or project history.

482           2. Financial and reputational background checks.

483           3. Criminal background check. A program administrator may  
484 rely on a background check conducted by the Florida Department  
485 of Business and Professional Regulation Construction Industry  
486 Licensing Board to comply with this requirement.

487           4. Status on Better Business Bureau or other online  
488 platforms that track contractor reviews.

489           (23) (a) Before disbursing funds to a contractor for a  
490 qualifying improvement on residential real property, a program  
491 administrator must first confirm the applicable work or service  
492 has been completed, either through written certification from  
493 the property owner, a recorded telephone call with the property  
494 owner, or a site inspection through third-party means.

495           (b) A program administrator may not disclose to a  
496 contractor or to a third party engaged in soliciting an  
497 assessment financing agreement the maximum financing amount for  
498 which a residential real property owner is eligible.

499           (24) Each program administrator and contractor must comply  
500 with the following marketing and communications guidelines when  
501 communicating with residential real property owners:

502           (a) A program administrator or contractor may not suggest  
503 or imply:



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504 1. That a REEF program or assessment financing is a  
505 government assistance program;

506 2. That qualifying improvements are free or that assessment  
507 financing is a free program; or

508 3. That the financing of a qualifying improvement using the  
509 REEF program does not require the property owner to repay the  
510 financial obligation.

511 (b) A program administrator or contractor may not make any  
512 representation as to the tax deductibility of an assessment  
513 authorized under this section on residential real property. A  
514 program administrator or contractor may encourage a property  
515 owner to seek the advice of a tax professional regarding tax  
516 matters related to assessments.

517 (25) A contractor should not present a higher price for a  
518 qualifying improvement on residential real property financed by  
519 assessment financing agreement than the contractor would  
520 otherwise reasonably present if the qualifying improvement were  
521 not being financed through a PACE assessment contract.

522 (26) Notwithstanding any provisions to the contrary  
523 contained in this section, the following applies to government  
524 leased property:

525 (a) The assessment financing agreement shall be executed by  
526 either:

527 1. Both the local government and the nongovernmental  
528 lessee; or

529 2. Solely by the nongovernmental lessee but with the  
530 written consent of the local government that must provide  
531 evidence of such consent to the program administrator or REEF  
532 program.



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533       (b) The assessment financing agreement must provide that  
534 the nongovernmental lessee is the only party obligated to pay  
535 the assessment.

536       (c) A delinquent assessment shall be enforced in the manner  
537 provided in s. 196.199(8).

538       (d) The recorded assessment financing agreement or a  
539 summary memorandum of such recorded agreement shall provide  
540 constructive notice that the assessment to be levied on the  
541 property is subject to enforcement in the manner provided in ss.  
542 197.432(10) and 196.199(8).

543       (e) For purposes of subsections (9) and (13) only,  
544 references to the property owner shall be deemed to refer to the  
545 nongovernmental lessee, and references to the period of  
546 ownership shall be deemed to refer to the period that the  
547 nongovernmental lessee has been leasing the property from the  
548 local government.

549       (f) The term of the assessment financing agreement on  
550 government leased property may not exceed the lesser of:

551       1. The useful life of the qualifying improvement being  
552 financed if one improvement is being financed, or, either the  
553 weighted average estimated useful life of all qualifying  
554 improvements being financed or the estimated useful life of the  
555 qualifying improvements to which the greatest portion of funds  
556 are disbursed if multiple qualifying improvements are being  
557 financed;

558       2. The remaining term of the lease on the government leased  
559 property; or

560       3. Thirty years.

561       (27) Residential real property is exempt from subsections





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562 (17) through (25) if:

563 (a) The residential real property is owned by a business  
564 entity that owns more than one residential real property; and

565 (b) The business entity's managing member, partner, or  
566 beneficial owner does not reside in the residential real  
567 property.

568 Section 2. This act shall take effect July 1, 2021.

569

570 ===== T I T L E A M E N D M E N T =====

571 And the title is amended as follows:

572 Delete everything before the enacting clause  
573 and insert:

574 A bill to be entitled

575 An act relating to the Resiliency Energy Environment  
576 Florida (REEF) program; amending s. 163.08, F.S.;  
577 revising legislative findings; defining and redefining  
578 terms; specifying that a property owner may apply to a  
579 REEF program for certain purposes; providing that  
580 costs incurred by the REEF program may be collected as  
581 a non-ad valorem assessment; authorizing a local  
582 government to enter into agreements with program  
583 administrators and to incur debt; authorizing a local  
584 government to enter into an assessment financing  
585 agreement only with the record owner of the affected  
586 property; revising the items a local government or a  
587 program administrator must reasonably determine before  
588 entering into an assessment financing agreement;  
589 requiring a qualifying improvement to be affixed or  
590 plan to be affixed to specified properties before



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591 final funding; authorizing an assessment financing  
592 agreement to cover qualifying improvements on real  
593 properties under new construction; revising the  
594 written disclosure statement required to be given by  
595 sellers to prospective purchasers when executing a  
596 contract for the sale and purchase of certain  
597 properties; requiring a program administrator to make  
598 specified determinations about a property owner's  
599 ability to pay the annual assessment; specifying  
600 information a program administrator must provide to  
601 the residential real property owner or an authorized  
602 representative before entering into an assessment  
603 financing agreement; specifying a timeframe within  
604 which a residential real property owner may cancel an  
605 assessment financing agreement; prohibiting the term  
606 of an assessment financing agreement from exceeding  
607 specified timeframes; prohibiting a program  
608 administrator from offering specified types of  
609 financing for residential real properties; prohibiting  
610 a program administrator from enrolling certain  
611 contractors unless certain conditions are met;  
612 providing requirements that must be met before a  
613 program administrator may disburse funds; specifying  
614 marketing and communications guidelines that program  
615 administrators and contractors must comply with when  
616 communicating with residential real property owners;  
617 prohibiting a contractor from engaging in certain  
618 practices regarding pricing of qualifying improvements  
619 on residential real properties; specifying



620 requirements for government leased property; providing  
621 exemptions for residential real property that meets  
622 certain conditions; providing an effective date.

By the Committee on Community Affairs; and Senators Rodriguez,  
Burgess, Gruters, and Polsky

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1 A bill to be entitled  
2 An act relating to the property assessed clean energy  
3 program; amending s. 163.08, F.S.; revising  
4 legislative findings regarding the types of  
5 improvements that qualify for specified financing  
6 under this act; defining and redefining terms;  
7 specifying that a property owner may apply to a PACE  
8 program for certain purposes; providing that costs  
9 incurred by the PACE program may be collected as a  
10 non-ad valorem assessment; authorizing a local  
11 government to enter into agreements with PACE  
12 administrators and to incur debt; authorizing a local  
13 government to enter into a PACE assessment contract  
14 only with the record owner of the affected property;  
15 revising the items a local government or a PACE  
16 administrator must reasonably determine before  
17 entering into a PACE contract; requiring a qualifying  
18 improvement to be affixed or plan to be affixed to  
19 specified properties before final funding; authorizing  
20 a PACE assessment contract to cover qualifying  
21 improvements on real properties under new  
22 construction; revising the written disclosure  
23 statement required to be given by sellers to  
24 prospective purchaser when executing a contract for  
25 the sale and purchase of certain properties; requiring  
26 a PACE administrator to make specified determinations  
27 about a property owner's ability to pay the annual  
28 PACE assessment; specifying information a PACE  
29 administrator must provide to the residential real

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 property owner or an authorized representative before  
31 entering into a PACE assessment contract; specifying a  
32 timeframe within which a residential real property  
33 owner may cancel a PACE assessment contract;  
34 prohibiting the term of a PACE assessment contract  
35 from exceeding specified timeframes; prohibiting a  
36 PACE administrator from offering specified types of  
37 financing for residential real properties; prohibiting  
38 a PACE administrator from enrolling certain PACE  
39 contractors unless certain conditions are met;  
40 providing requirements that must be met before a PACE  
41 administrator may disburse funds; specifying marketing  
42 and communications guidelines that PACE administrators  
43 and PACE contractors must comply with when  
44 communicating with residential real property owners;  
45 prohibiting a PACE contractor from engaging in certain  
46 practices regarding pricing of qualifying improvement  
47 on residential real properties; providing an effective  
48 date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Subsections (1), (2), (4), (6) through (10),  
53 (12), (13), and (14) of section 163.08, Florida Statutes, are  
54 amended, and subsections (17) through (25) are added to that  
55 section, to read:

56 163.08 Supplemental authority for improvements to real  
57 property.—

58 (1) (a) In chapter 2008-227, Laws of Florida, the

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59 Legislature amended the energy goal of the state comprehensive  
 60 plan to provide, in part, that the state shall reduce its energy  
 61 requirements through enhanced conservation and efficiency  
 62 measures in all end-use sectors and reduce atmospheric carbon  
 63 dioxide by promoting an increased use of renewable energy  
 64 resources. That act also declared it the public policy of the  
 65 state to play a leading role in developing and instituting  
 66 energy management programs that promote energy conservation,  
 67 energy security, and the reduction of greenhouse gases. In  
 68 addition to establishing policies to promote the use of  
 69 renewable energy, the Legislature provided for a schedule of  
 70 increases in energy performance of buildings subject to the  
 71 Florida Energy Efficiency Code for Building Construction. In  
 72 chapter 2008-191, Laws of Florida, the Legislature adopted new  
 73 energy conservation and greenhouse gas reduction comprehensive  
 74 planning requirements for local governments. In the 2008 general  
 75 election, the voters of this state approved a constitutional  
 76 amendment authorizing the Legislature, by general law, to  
 77 prohibit consideration of any change or improvement made for the  
 78 purpose of improving a property's resistance to wind damage or  
 79 the installation of a renewable energy source device in the  
 80 determination of the assessed value of residential real  
 81 property.

82 (b) The Legislature finds that all energy-consuming-  
 83 improved properties that are not using energy conservation  
 84 strategies contribute to the burden affecting all improved  
 85 property resulting from fossil fuel energy production. Improved  
 86 property that has been retrofitted with energy-related  
 87 qualifying improvements receives the special benefit of

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88 alleviating the property's burden from energy consumption. All  
 89 improved properties not protected from wind or flood damage by  
 90 wind or flood resistant ~~resistance~~ qualifying improvements  
 91 contribute to the burden affecting all improved property  
 92 resulting from potential wind or flood damage. Improved property  
 93 that has been retrofitted with wind or flood resistant  
 94 ~~resistance~~ qualifying improvements receives the special benefit  
 95 of reducing the property's burden from potential wind or flood  
 96 damage. Further, the installation and operation of qualifying  
 97 improvements not only benefit the affected properties for which  
 98 the improvements are made, but also assist in fulfilling the  
 99 goals of the state's energy and hurricane mitigation policies.

100 (c) Properties that do not use advanced technologies for  
 101 wastewater removal contribute to the water quality problems  
 102 affecting the state and particularly the coastal areas. Improved  
 103 properties that have been retrofitted with advanced onsite  
 104 treatment systems or have converted to central sewerage  
 105 significantly benefit the quality of water that may enter  
 106 streams, lakes, rivers, aquifers, canals, estuaries, or coastal  
 107 areas. Properties that are not protected from harmful  
 108 environmental health hazards contribute to the environmental  
 109 health burdens affecting the state. Properties that have been  
 110 improved to mitigate against or prevent environmental health  
 111 hazards benefit the general environmental health of the people  
 112 within this state.

113 (d) In order to make qualifying improvements more  
 114 affordable and assist property owners who wish to undertake such  
 115 improvements, the Legislature finds that there is a compelling  
 116 state interest in enabling property owners to voluntarily

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117 finance such improvements with local government assistance.

118 ~~(e)(e)~~ The Legislature determines that the actions  
119 authorized under this section, including, but not limited to,  
120 the financing of qualifying improvements through the execution  
121 of property assessed clean energy assessment contracts ~~financing~~  
122 ~~agreements~~ and the related imposition of voluntary assessments  
123 are reasonable and necessary to serve and achieve a compelling  
124 state interest and are necessary for the prosperity and welfare  
125 of the state and its property owners and inhabitants.

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

127 (a) "Commercial real property" means, unless otherwise  
128 determined by a local government, any property not defined as a  
129 residential real property, that will be or is improved by a  
130 qualifying improvement, including, but not limited to, the  
131 following:

132 1. A multifamily residential property comprised of five or  
133 more dwelling units.

134 2. A commercial real property.

135 3. An industrial building or property.

136 4. Agricultural property.

137 5. A residential property owned by a business entity.

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

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

143 (d) "PACE assessment" means the non-ad valorem assessment  
144 securing the annual repayment of financing obtained by an owner  
145 of commercial or residential real property for a qualifying

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146 improvement under this chapter.

147 (e) "PACE assessment contract" means the financing  
148 contract, under a PACE program, between a local government and a  
149 property owner for the acquisition or installation of qualifying  
150 improvements.

151 (f) "PACE contractor" means an independent contractor who  
152 contracts with a property owner to install qualifying  
153 improvements on real property and is not the owner of such  
154 property.

155 (g) "PACE program" means a program established by a local  
156 government, alone or in partnership with other local governments  
157 or a PACE administrator, to finance qualifying improvements on  
158 commercial or residential real properties.

159 (h) "Qualifying improvement" includes any:

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

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

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175 geothermal energy, bioenergy, and wind energy.

176 3. Wind, storm, and flood resistance improvement, which

177 includes, but is not limited to:

178 a. Improving the strength of the roof deck attachment.~~†~~

179 b. Creating a secondary water barrier to prevent water

180 intrusion.~~†~~

181 c. Installing wind-resistant shingles.~~†~~

182 d. Installing gable-end bracing.~~†~~

183 e. Reinforcing roof-to-wall connections.~~†~~

184 f. Installing storm shutters.~~†~~~~†~~

185 g. Installing opening protections.

186 h. Installing backup power or battery storage systems.

187 4. Wastewater treatment improvement, which includes the

188 replacement or improvement of an onsite sewage treatment and

189 disposal system with an advanced onsite treatment and disposal

190 system or technology or the replacement of an onsite sewage

191 treatment and disposal system with a central sewage system. For

192 purposes of this section, the term "wastewater treatment

193 improvement" includes repairs or modifications made to an onsite

194 sewage treatment and disposal system under s. 381.0065.

195 5. Flood and water damage mitigation and resiliency

196 improvement, which includes projects and installations:

197 a. To raise a structure above the base flood elevation to

198 reduce flood damage.

199 b. To build or repair a flood diversion apparatus or sea

200 wall improvement, which includes, but is not limited to, seawall

201 repairs and replacements, banks, berms, green-grey

202 infrastructure, upland stem walls, or other infrastructure that

203 impedes tidal waters from flowing onto adjacent property or a

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204 public right-of-way.

205 c. That use flood damage resistant building materials.

206 d. That mitigate or eliminate the potential for microbial

207 growth.

208 e. That use electrical, mechanical, plumbing, or other

209 system improvements to reduce flood damage.

210 f. That may qualify for reductions in flood insurance

211 premiums.

212 6. Health and environmental hazards measure or improvement,

213 which is a measure or an improvement intended to mitigate

214 harmful health and environmental hazards to property occupants,

215 including measures or improvements that mitigate or remove:

216 a. The presence of lead, heavy metals, polyfluoroalkyl

217 substance contamination, or other harmful contaminants in

218 potable water systems. Improvements may include conversion of

219 well water to municipal water systems, replacement of lead water

220 service lines, or installation of water filters.

221 b. Asbestos.

222 c. Lead paint contamination in housing built before 1978.

223 d. Indoor air pollution or contaminants, including

224 particulate matter, viruses, bacteria, and mold.

225 7. Water conservation or efficiency improvement, which is a

226 measure or improvement to reduce the usage of water or increase

227 the efficiency of water usage.

228 (i) "Residential real property" means a residential

229 property of four or fewer dwelling units that may be benefited

230 by installation of a qualifying improvement.

231 (4) Subject to local government ordinance or resolution, a

232 property owner may apply to a PACE program ~~the local government~~

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233 for funding to finance a qualifying improvement and enter into a  
 234 PACE assessment contract financing agreement with the local  
 235 government. Costs incurred by the PACE program local government  
 236 for such purpose may be collected as a non-ad valorem  
 237 assessment. A non-ad valorem assessment shall be collected  
 238 pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a),  
 239 is shall not be subject to a discount for early payment.  
 240 However, the notice and adoption requirements of s. 197.3632(4)  
 241 do not apply if this section is used and complied with, and the  
 242 intent resolution, publication of notice, and mailed notices to  
 243 the property appraiser, tax collector, and Department of Revenue  
 244 required by s. 197.3632(3)(a) may be provided on or before  
 245 August 15 in conjunction with any non-ad valorem assessment  
 246 authorized by this section, if the property appraiser, tax  
 247 collector, and local government agree.

248 (6) A local government may enter into an agreement with a  
 249 PACE administrator to administer a PACE program ~~A qualifying~~  
 250 ~~improvement program may be administered by a for-profit entity~~  
 251 ~~or a not-for-profit organization on behalf of and at the~~  
 252 ~~discretion of the local government.~~

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

257 (8) A local government may enter into a PACE assessment  
 258 contract to finance or refinance a qualifying improvement  
 259 ~~financing agreement~~ only with the record owner of the affected  
 260 property. Any PACE assessment contract financing agreement  
 261 entered into pursuant to this section or a summary memorandum of

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262 such contract agreement shall be submitted for recording  
 263 ~~recorded~~ in the public records of the county within which the  
 264 property is located by the ~~sponsoring unit of~~ local government  
 265 within 5 days after execution of the contract agreement. The  
 266 recorded contract agreement shall provide constructive notice  
 267 that the PACE assessment to be levied on the property  
 268 constitutes a lien of equal dignity to county taxes and  
 269 assessments from the date of recordation.

270 (9) Before entering into a PACE assessment contract  
 271 ~~financing agreement~~, the local government or the PACE  
 272 ~~administrator local government~~ shall reasonably determine that:  
 273 (a) All property taxes and any other assessments levied on  
 274 the same bill as property taxes are current and have been paid  
 275 ~~and have not been delinquent~~ for the preceding 3 years or the  
 276 property owner's period of ownership, whichever is less;  
 277 (b) That there are no involuntary liens, including, but not  
 278 limited to, construction liens on the property;  
 279 (c) That no notices of default or other evidence of  
 280 property-based debt delinquency have been recorded and not  
 281 released during the preceding 3 years or the property owner's  
 282 period of ownership, whichever is less;  
 283 (d) The property owner has recorded all other PACE  
 284 assessments or that the PACE assessments have been funded and  
 285 not yet recorded on the property; and  
 286 (e) That the property owner is current on all mortgage debt  
 287 on the property.

288 (10) Before final funding, a qualifying improvement must  
 289 ~~shall~~ be affixed or plan to be affixed to a commercial or  
 290 residential real building or facility that is part of the



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291 property and shall constitute an improvement to that property  
 292 ~~the building or facility or a fixture attached to the building~~  
 293 ~~or facility. A PACE assessment contract An agreement between a~~  
 294 ~~local government and a qualifying property owner may not cover~~  
 295 ~~qualifying wind resistance improvements on commercial or~~  
 296 ~~residential real properties in buildings or facilities under new~~  
 297 ~~construction or construction for which a certificate of~~  
 298 ~~occupancy or similar evidence of substantial completion of new~~  
 299 ~~construction or improvement has not been issued.~~

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

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

313 (13) At least 30 days before entering into a PACE  
 314 ~~assessment contract financing agreement~~, the property owner  
 315 shall provide to the holders or loan servicers of any existing  
 316 mortgages encumbering or otherwise secured by the property a  
 317 notice of the owner's intent to enter into a PACE assessment  
 318 ~~contract financing agreement~~ together with the maximum principal  
 319 amount to be financed and the maximum annual PACE assessment

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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320 necessary to repay that amount. A verified copy or other proof  
 321 of such notice shall be provided to the local government. A  
 322 provision in any PACE assessment contract agreement between a  
 323 mortgagee or other lienholder and a property owner, or otherwise  
 324 now or hereafter binding upon a property owner, which allows for  
 325 acceleration of payment of the mortgage, note, or lien or other  
 326 unilateral modification solely as a result of entering into a  
 327 PACE assessment contract financing agreement as provided for in  
 328 this section is not enforceable. This subsection does not limit  
 329 the authority of the holder or loan servicer to increase the  
 330 required monthly escrow by an amount necessary to ~~annually~~ pay  
 331 the annual PACE qualifying improvement assessment.

332 (14) At or before the time a purchaser executes a contract  
 333 for the sale and purchase of any property for which a PACE non-  
 334 ~~ad valorem~~ assessment has been levied under this section and has  
 335 an unpaid balance due, the seller must ~~shall~~ give the  
 336 prospective purchaser a written disclosure statement in the  
 337 following form, which shall be set forth in the contract or in a  
 338 separate writing:

339  
 340 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,  
 341 RENEWABLE ENERGY, FLOOD MITIGATION, OR WIND  
 342 RESISTANCE, ADVANCED TECHNOLOGIES FOR WASTEWATER  
 343 TREATMENT, ENVIRONMENTAL HEALTH, OR WATER  
 344 CONSERVATION.—The property being purchased is located  
 345 within the jurisdiction of a local government that has  
 346 placed an assessment on the property pursuant to s.  
 347 163.08, Florida Statutes. The assessment is for a  
 348 qualifying improvement to the property relating to

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349 energy efficiency, renewable energy, flood mitigation,  
 350 ~~or~~ wind resistance, advanced technologies for  
 351 wastewater treatment, environmental health, or water  
 352 conservation, and is not based on the value of  
 353 property. You are encouraged to contact the county  
 354 property appraiser's office to learn more about this  
 355 and other assessments that may be provided by law.

357 (17) Before entering into a PACE assessment contract for a  
 358 qualifying improvement on a residential real property, a PACE  
 359 administrator must reasonably determine that the property owner  
 360 has an ability to pay the estimated annual PACE assessment  
 361 based, at a minimum, on the following:

362 (a) For property owners seeking PACE financing where the  
 363 total estimated annual payment amount of all PACE assessments  
 364 authorized on the property is \$4,800 or less, or the equivalent  
 365 of \$400 per month, plus an additional amount that represents the  
 366 rate of inflation established by the United States Bureau of  
 367 Labor Statistics' Consumer Price Index, the PACE administrator,  
 368 at a minimum, must use the underwriting requirements in  
 369 subsection (9) and confirm the property owner is not currently  
 370 in bankruptcy in determining whether the property owner has a  
 371 reasonable ability to pay the PACE assessment.

372 (b) For property owners seeking PACE financing where the  
 373 total estimated annual payment amount of all PACE assessments  
 374 authorized on the property is greater than \$4,800, or the  
 375 equivalent of \$400 per month, plus an additional amount that  
 376 represents the rate of inflation established by the United  
 377 States Bureau of Labor Statistics' Consumer Price Index, the

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378 PACE administrator, at a minimum, must use the underwriting  
 379 requirements in subsection (9), to confirm that the property  
 380 owner is not in bankruptcy and determine that the total  
 381 estimated annual payment amount for all the PACE assessment  
 382 contracts authorized on the property does not exceed 10 percent  
 383 of the property owner's annual household income. Income may be  
 384 confirmed using information gathered from reputable third  
 385 parties that provide reasonably reliable evidence of the  
 386 property owner's household income. Income may not be confirmed  
 387 solely from a property owner's statement.

388 (18) Before entering into a PACE assessment contract for a  
 389 qualifying improvement on a residential real property, the PACE  
 390 administrator must:

391 (a) Provide a financing estimate and disclosure to the  
 392 residential real property owner that includes:

393 1. The total amount estimated to be funded, including the  
 394 cost of the qualifying improvements, program fees, and  
 395 capitalized interest, if any.

396 2. The estimated annual PACE assessment.

397 3. The term of the PACE assessment.

398 4. The fixed interest charged and estimated annual  
 399 percentage rate.

400 5. A description of the qualifying improvement.

401 6. A disclosure that if the property owner sells or  
 402 refinances the property, the property owner, as a condition of  
 403 the sale or the refinance, may be required by a mortgage lender  
 404 to pay off the full amount owed under each PACE assessment  
 405 contract.

406 7. A disclosure that the PACE assessment will be collected

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407 along with the property owner's property taxes and will result  
 408 in a lien on the property from the date the PACE assessment  
 409 contract is executed.

410 8. A disclosure that failure to pay the PACE assessment may  
 411 result in penalties and fees, along with the issuance of a tax  
 412 certificate that could result in the property owner losing the  
 413 real property.

414 (b) Conduct, with a residential real property owner or an  
 415 authorized representative, an oral, recorded telephone call  
 416 during which time the PACE administrator must use plain  
 417 language. The PACE administrator must ask the residential real  
 418 property owner if he or she would like to communicate primarily  
 419 in a language other than English. A PACE administrator may not  
 420 leave a voicemail to the residential real property owner to  
 421 satisfy this requirement. A PACE administrator, as part of this  
 422 telephone call, must confirm with the residential real property  
 423 owner:

424 1. That at least one residential real property owner has  
 425 access to a copy of the PACE assessment contract and financing  
 426 estimates and disclosures.

427 2. The qualifying improvement that is being financed.

428 3. The total estimated annual costs that the residential  
 429 real property owner will have to pay under the PACE assessment  
 430 contract, including applicable fees.

431 4. The total estimated average monthly equivalent amount of  
 432 funds the residential real property owner would have to save in  
 433 order to pay the annual costs of the PACE assessment, including  
 434 applicable fees.

435 5. The estimated date the residential real property owner's

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436 first property tax payment that includes the PACE assessment  
 437 will be due.

438 6. The term of the PACE assessment contract.

439 7. That payments for the PACE assessment contract will  
 440 cause the residential real property owner's annual tax bill to  
 441 increase, that payments will be made through an additional  
 442 annual assessment on the property, and will be paid either  
 443 directly to the county tax collector's office as part of the  
 444 total annual secured property tax bill or may be paid through  
 445 the residential real property owner's mortgage escrow account.

446 8. That the qualifying residential real property owner has  
 447 disclosed whether the property has received or is seeking  
 448 additional PACE assessments and has disclosed all other PACE  
 449 assessments or special taxes that are or about to be placed on  
 450 the property.

451 9. That the property will be subject to a lien during the  
 452 term of the PACE assessment contract and that the obligations  
 453 under the contract may be required to be paid in full before the  
 454 residential real property owner sells or refinances the  
 455 property.

456 10. That any potential utility or insurance savings are not  
 457 guaranteed and will not reduce the PACE assessment or total  
 458 assessment amount.

459 11. That the PACE administrator or PACE contractor does not  
 460 provide tax advice and that the residential real property owner  
 461 should seek professional tax advice if he or she has questions  
 462 regarding tax credits, tax deductibility, or other tax impacts  
 463 of the qualifying improvement or the PACE assessment contract.

464 (19) The residential real property owner may cancel the

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465 PACE assessment contract within 3 business days after signing  
 466 the PACE assessment contract without any financial penalty for  
 467 doing so.

468 (20) The term of a PACE assessment contract on residential  
 469 real property may not exceed the useful life of the qualifying  
 470 improvement being installed or the weighted average useful life  
 471 of all qualifying improvements being financed if multiple  
 472 qualifying improvements are being financed. A financing term may  
 473 not exceed 30 years.

474 (21) A PACE administrator may not offer PACE assessment  
 475 financing on any residential real property that includes any of  
 476 the following:

477 (a) A negative amortization schedule;

478 (b) A balloon payment; or

479 (c) Prepayment fees, other than nominal administrative  
 480 costs.

481 (22) For residential real property, a PACE administrator:

482 (a) May not enroll a PACE contractor who offers PACE  
 483 financing on residential real property unless:

484 1. The PACE administrator makes a reasonable effort to  
 485 review that the PACE contractor maintains in good standing an  
 486 appropriate license from the state, if applicable, as well as  
 487 any other permits, licenses, or registrations required for  
 488 engaging in its business in the jurisdiction where it operates  
 489 and maintains all state required bond and insurance coverage.

490 2. The PACE administrator obtains the PACE contractor's  
 491 written agreement that the PACE contractor will act in  
 492 accordance with all applicable laws, including applicable  
 493 advertising and marketing laws and regulations.

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494 (b) Must maintain a process to enroll new PACE contractors  
 495 that includes reasonable review of the following for each  
 496 contractor:

497 1. Relevant work or project history.

498 2. Financial and reputational background checks.

499 3. Criminal background check.

500 4. Status on Better Business Bureau or other online  
 501 platforms that track contractor reviews.

502 (23) (a) Before disbursing funds to a PACE contractor for a  
 503 qualifying improvement on residential real property, a PACE  
 504 administrator must first confirm the applicable work or service  
 505 has been completed, either through written certification from  
 506 the property owner, a recorded telephone call with the property  
 507 owner, or a site inspection through third-party means.

508 (b) A PACE administrator may not disclose to a PACE  
 509 contractor or to a third party engaged in soliciting a PACE  
 510 assessment contract the maximum PACE financing amount for which  
 511 a residential real property owner is eligible.

512 (24) Each PACE administrator and PACE contractor must  
 513 comply with the following marketing and communications  
 514 guidelines when communicating with residential real property  
 515 owners:

516 (a) A PACE administrator or PACE contractor may not suggest  
 517 or imply:

518 1. That PACE is a government assistance program;

519 2. That qualifying improvements are free or that PACE

520 assessment financing is a free program; or

521 3. That the financing of a qualifying improvement using the  
 522 PACE program does not require the property owner to repay the

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523 financial obligation.

524 (b) A PACE administrator or PACE contractor may not make  
525 any representation as to the tax deductibility of a PACE  
526 assessment on residential real property. A PACE administrator or  
527 PACE contractor may encourage a property owner to seek the  
528 advice of a tax professional regarding tax matters related to  
529 PACE assessments.

530 (25) A PACE contractor should not present a higher price  
531 for a qualifying improvement on residential real property  
532 financed by a PACE assessment contract than the PACE contractor  
533 would otherwise reasonably present if the qualifying improvement  
534 were not being financed through a PACE assessment contract.

535 Section 2. This act shall take effect July 1, 2021.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/18/21  
Meeting Date

SB1208  
Bill Number (if applicable)

Topic Property Assessed Clean Energy Program

Amendment Barcode (if applicable)

Name Slater Bayliss

Job Title \_\_\_\_\_

Address 204 S. Monroe St.  
Street  
Tallahassee FL 32304  
City State Zip

Phone 850-222-8900

Email swb@cardinaspartners.co

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Ygrene Energy

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE

APPEARANCE RECORD

3-18-21

Meeting Date

1208

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-979-7110

Street

Miami

FL

33156

Email jmm2@miamidade.gov

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 18 / 21

Meeting Date

SB 1208

Bill Number (if applicable)

Topic Property Assessed Clean Energy Program

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd, Ste 201

Phone 850-509-8020

Street

Tallahassee

FL

32301

City

State

Zip

Email kpratt@floridabankers.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/18/2021

Meeting Date

1208

Bill Number (if applicable)

Topic Property Assessed Clean Energy Program

Amendment Barcode (if applicable)

Name Melanie Bastick

Job Title Vice President

Address P. O. Box 390

Phone (850) 841-1726

Street

Tallahassee FL

32302

Email melanie@libertypartnersfl.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Advanced Energy Economy

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/14/2021  
Meeting Date

1208  
Bill Number (if applicable)

PACE  
Topic

Amendment Barcode (if applicable)

Kate Wesner  
Name

Director of Government Activities  
Job Title

7200 Corporate Center Dr. Ste #510  
MIAMI, FL 33126  
Address Street City State Zip

561 722 3659  
Phone

Kate.wesner@govenergy.com  
Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Govene Energy Fund  
Representing

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Duplicate*

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/18/21 A1 9 am  
*Meeting Date*

1208  
*Bill Number (if applicable)*

Topic Property Assessed Clean Energy Program

*Amendment Barcode (if applicable)*

Name David Cullen

Job Title \_\_\_\_\_

Address 1934 Shelby Ct

Phone 941-323-2404

*Street*

Tallahassee

FL

32308

Email cullenasea@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Sierra Club Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

# CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Finance and Tax Committee

Judge:

Started: 3/18/2021 9:01:19 AM

Ends: 3/18/2021 10:05:06 AM

Length: 01:03:48

9:01:18 AM Meeting called to order by Chair Rodriguez  
9:01:21 AM Roll call by CAA Stephanie Bell-Parker  
9:01:40 AM Quorum present  
9:01:54 AM Senator Hooper and Senator Harrell is excused while presenting in other Committee  
9:02:16 AM Comments from Chair Rodriguez  
9:02:41 AM Introduction of Tab 2, SB 1334 by Chair Rodriguez  
9:02:51 AM Explanation of SB 1334, Excise Tax on Documents by Senator Boyd  
9:03:18 AM Comments from Chair Rodriguez  
9:03:24 AM Introduction of Amendment Barcode 843122 by Chair Rodriguez  
9:03:27 AM Explanation of Amendment by Senator Boyd  
9:03:36 AM Comments from Chair Rodriguez  
9:04:02 AM Closure waived  
9:04:05 AM Amendment adopted  
9:04:11 AM Comments from Chair Rodriguez  
9:04:32 AM Courtney Larkin, Florida Bankers Association waives in support  
9:04:43 AM Comments from Chair Rodriguez  
9:04:49 AM Closure waived  
9:04:51 AM Roll call by CAA  
9:04:56 AM CS/SB 1334 reported favorably  
9:05:42 AM Introduction of Tab 3, SB 996 by Chair Rodriguez  
9:05:48 AM Explanation of SB 996, Community Associations by Senator Garcia  
9:06:58 AM  
9:06:59 AM Comments from Chair Rodriguez  
9:07:03 AM Question from Senator Cruz  
9:07:14 AM Response from Senator Garcia  
9:07:59 AM Comments from Chair  
9:08:05 AM Nelson Diaz, Fairness in Taxation waives in support  
9:08:31 AM Closure waived  
9:08:33 AM Roll call by CAA  
9:08:44 AM SB 996 reported favorably  
9:09:00 AM Introduction of CS/SB 342 by Chair Rodriguez  
9:09:17 AM Explanation of CS/SB 342, Vehicle and Vessel Registration by Senator Diaz  
9:10:39 AM Comments from Chair Rodriguez  
9:10:39 AM  
9:10:42 AM Question from Senator Cruz  
9:10:50 AM Response from Senator Diaz  
9:11:26 AM Follow-up question from Senator Cruz  
9:11:34 AM Response from Senator Diaz  
9:13:00 AM Question from Senator Berman  
9:13:05 AM Response from Senator Diaz  
9:13:30 AM Follow-up question from Senator Berman  
9:13:36 AM Response from Senator Diaz  
9:14:11 AM Follow-up question from Senator Berman  
9:14:20 AM Response from Senator Diaz  
9:14:41 AM Follow-up question from Senator Berman  
9:14:49 AM Response from Senator Diaz  
9:15:51 AM Question from Senator Harrell  
9:15:58 AM Response from Senator Diaz  
9:17:09 AM Follow-up question from Senator Harrell  
9:17:20 AM Response from Senator Diaz  
9:17:55 AM Question from Senator Cruz  
9:18:00 AM Response from Senator Harrell

9:18:29 AM Follow-up question from Senator Cruz  
9:18:38 AM Response from Senator Harrell  
9:19:30 AM Question from Senator Wright  
9:19:38 AM Question from Senator Cruz  
9:21:07 AM Response from Senator Wright  
9:21:16 AM Follow-up question from Senator Cruz  
9:21:22 AM Response from Senator Wright  
9:21:46 AM Follow-up question from Senator Cruz  
9:21:59 AM Andrew Ketchel, Dealer Services Network waives in support  
9:22:17 AM Comments from Chair Rodriguez  
9:22:22 AM Senator Berman in debate  
9:23:24 AM Senator Wright in debate  
9:24:22 AM Senator Harrell in debate  
9:26:20 AM Senator Diaz in closure  
9:26:33 AM Roll call by CAA  
9:27:10 AM CS/SB 342 reported favorably  
9:27:24 AM Introduction of Tab 1, SB 982 by Chair Rodriguez  
9:27:49 AM Explanation of SB 982, Tax Refund Program for qualified Target Industry Businesses by Senator Gruters  
presented by Senator Hooper  
9:28:43 AM Question from Senator Cruz  
9:28:52 AM Response from Senator Hooper  
9:29:16 AM Comments from Senator Harrell  
9:29:45 AM Follow-up question from Senator Cruz  
9:30:03 AM Response from Senator Harrell  
9:30:34 AM Comments from Chair Rodriguez  
9:30:41 AM Ethan Perry, Florida Department of Economic Opportunity waives in support  
9:30:46 AM Carolyn Johnson, Florida Chamber of Commerce waives in support  
9:30:53 AM Bob McKee, Florida Association of Counties waives in support  
9:30:58 AM Jess McCarty, Miami-Dade County waives in support  
9:31:05 AM Robert Stuart, Orlando Economic Partnership waives in support  
9:31:12 AM Jake Felder, Enterprise Florida, Inc. waives in support  
9:31:30 AM Comments from Chair Rodriguez  
9:31:37 AM Senator Harrell in debate  
9:33:14 AM Comments from Chair Rodriguez  
9:33:20 AM Senator Hooper in closure  
9:33:25 AM Roll call by CAA  
9:34:18 AM SB 982 reported favorably  
9:34:32 AM Chair passed to Senator Cruz  
9:34:45 AM Introduction of CS/SB 1208 by Chair Cruz  
9:34:59 AM Introduction of Amendment Barcode 902216 by Chair Cruz  
9:35:15 AM Explanation of Amendment by Senator Rodriguez  
9:35:56 AM Comments from Chair Cruz  
9:36:39 AM Closure waived  
9:36:42 AM Amendment adopted  
9:36:54 AM Question from Senator Jones  
9:37:00 AM Response from Senator Rodriguez  
9:38:31 AM Question from Senator Berman  
9:38:43 AM Response from Senator Rodriguez  
9:39:01 AM Follow-up question from Senator Berman  
9:39:10 AM Response from Senator Rodriguez  
9:39:43 AM Comments from Chair Cruz  
9:39:49 AM Slater Bayliss, Ygrene Energy waives in support  
9:40:12 AM Jess McCarty, Miami-Dade County waives in support  
9:40:24 AM Speaker Kenneth Spratt, Florida Bankers Association in opposition  
9:42:15 AM Question from Senator Jones  
9:42:19 AM Response from Mr. Spratt  
9:43:41 AM Question from Senator Rodrigues  
9:43:53 AM Response from Mr. Spratt  
9:44:16 AM Follow-up question from Senator Rodrigues  
9:44:28 AM Response from Mr. Spratt  
9:45:19 AM Question from Chair Cruz  
9:45:26 AM Response from Mr. Spratt

9:46:49 AM Response from Mr. Spratt  
9:46:50 AM Question from Senator Harrell  
9:47:00 AM Response from Mr. Spratt  
9:49:42 AM Follow-up question from Senator Harrell  
9:49:52 AM Response from Mr. Spratt  
9:50:16 AM Follow-up question from Senator Harrell  
9:50:23 AM Response from Mr. Spratt  
9:50:43 AM Follow-up question from Senator Harrell  
9:50:51 AM Response from Mr. Spratt  
9:51:34 AM Follow-up question from Senator Harrell  
9:51:46 AM Response from Mr. Spratt  
9:52:30 AM Comments from Chair Cruz  
9:52:46 AM Speaker Melanie Bostick, Advanced Energy Economy in support  
9:53:38 AM Speaker Kate Wesner, Ygrene Energy Fund in support  
9:54:50 AM David Cullen, Sierra Club Florida waives in opposition  
9:55:40 AM Comments from Chair Cruz  
9:55:46 AM Senator Harrell in debate  
9:57:08 AM Senator Hooper in debate  
9:59:11 AM Senator Berman in debate  
9:59:52 AM Senator Rodrigues in debate  
10:01:45 AM Senator Wright in debate  
10:02:08 AM Comments from Chair Cruz  
10:02:24 AM Senator Rodriguez in closure  
10:02:33 AM Roll call by CAA  
10:03:33 AM CS/CS/SB 1208 reported favorably  
10:03:55 AM Chair returned to Senator Rodriguez  
10:04:05 AM Comments from Chair Rodriguez  
10:04:12 AM Senator Hooper moves to vote in the affirmative on SB 1334 and SB 996  
10:04:26 AM Senator Harrell moves to vote in the affirmative on SB 1334 and SB 996  
10:04:47 AM Motion adopted for the affirmative votes from Senator Hooper and Harrell  
10:04:50 AM Senator Wright moves to adjourn  
10:04:56 AM Meeting adjourned