



177270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2010	.	
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The Committee on Community Affairs (Bennett) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

163.08 Supplemental authority regarding improvements to real property.-

(1) (a) The Legislature affirms its previous amendments to the energy goal of the state comprehensive plan, which provided, in part, that Florida shall reduce its energy requirements through enhanced conservation and efficiency measures in all



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13 end-use sectors and shall reduce atmospheric carbon dioxide by  
14 promoting an increased use of renewable energy resources. The  
15 Legislature also affirms its previous declaration that it is the  
16 public policy of this state to play a leading role in developing  
17 and instituting energy management programs aimed at promoting  
18 energy conservation, energy security, and reduction of  
19 greenhouse gases. In addition to establishing policies to  
20 promote the use of renewable energy, the Legislature finds that  
21 it must continue to provide for a schedule of increases in  
22 energy performance of buildings subject to the Florida Energy  
23 Efficiency Code for Building Construction. The Legislature  
24 further finds that it must continue to adopt new energy  
25 conservation and greenhouse gas reduction comprehensive planning  
26 requirements for local governments. The Legislature acknowledges  
27 that in the General Election of 2008, the voters of this state  
28 approved a constitutional amendment authorizing the Legislature,  
29 by general law, to prohibit consideration of any change or  
30 improvement made for the purpose of improving the property's  
31 resistance to wind damage or the installation of a renewable  
32 energy source device in the determination of the assessed value  
33 of real property used for residential purposes.

34 (b) All energy-consuming improved properties not using  
35 energy conservation strategies contribute to the burden  
36 affecting all improved property resulting from fossil fuel  
37 energy production. Improved property that has been retrofitted  
38 with energy-related qualifying improvements receives the special  
39 benefit of alleviating the property's burden from energy  
40 consumption. All improved properties not protected from wind  
41 damage by wind resistance improvements contribute to the burden



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42 affecting all improved property resulting from potential wind  
43 damage. Improved property that has been retrofitted with wind  
44 resistance qualifying improvements receives the special benefit  
45 of reducing the property's burden from potential wind damage.  
46 Further, the installation and operation of qualifying  
47 improvements not only benefit the affected properties for which  
48 the improvements are made, but also assist in fulfilling the  
49 goals of the state's energy and hurricane mitigation policies.  
50 To make qualifying improvements more affordable and assist  
51 property owners who wish to undertake them, there is a  
52 compelling state interest in enabling property owners, on a  
53 voluntary basis, to finance such improvements with local  
54 government assistance.

55 (c) The Legislature finds that the actions authorized under  
56 this section, including the financing therein of qualifying  
57 improvements through the execution of financing agreements and  
58 the related imposition of voluntary assessments or charges, are  
59 reasonable and necessary to serve and achieve a compelling state  
60 interest and for the prosperity and welfare of the state and its  
61 property owners and inhabitants.

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

63 (a) "Local government" means a county, a municipality, or a  
64 special district.

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

66 1. "Energy conservation and efficiency improvement," which  
67 means a measure to reduce consumption, through conservation or  
68 more efficient use, of electricity, natural gas, propane, or  
69 other forms of energy on the property, including, but not  
70 limited to, air sealing, installation of insulation,



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71 installation of energy-efficient heating, cooling, or  
72 ventilation systems, building modifications to increase the use  
73 of daylighting, replacement of windows, installation of energy  
74 controls or energy-recovery systems, and installation of  
75 efficient lighting equipment, provided that, to be covered by an  
76 agreement with a property owner and financed under this section,  
77 such improvement must be affixed to a building or facility that  
78 is part of the property.

79 2. "Renewable energy improvement," which means the  
80 installation of any system whereby electrical, mechanical, or  
81 thermal energy is produced from a method that uses one or more  
82 of the following fuels or energy sources: hydrogen, solar  
83 energy, geothermal energy, bioenergy, or wind energy.

84 3. "Wind resistance improvement," which includes, but is  
85 not limited to:

- 86 a. Improving the strength of the roof deck attachment;  
87 b. Creating a secondary water barrier to prevent water  
88 intrusion;  
89 c. Installing wind-resistant shingles;  
90 d. Installing gable-end bracing;  
91 e. Reinforcing roof-to-wall connections;  
92 f. Installing storm shutters; and  
93 g. Installing opening protections.

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

96 (4) Subject to local government ordinance or resolution, a  
97 property owner may apply to the local government for funding to  
98 finance a qualifying improvement and enter into a financing  
99 agreement with the local government. Costs incurred by the local



100 government for such purpose may be collected as a non-ad valorem  
101 assessment or a municipal or county lien, or may be collected  
102 pursuant to any other lawful method.

103 (a) A non-ad valorem assessment shall be collected pursuant  
104 s. 197.3632. However, the notice and adoption requirements of s.  
105 197.3632(4) do not apply if the provisions of this section are  
106 used and complied with, and the initial resolution, publication  
107 of notice, and mailed notices to the property appraiser, tax  
108 collector, and Department of Revenue required by s.  
109 197.3632(3) (a) are provided on or before August 15 in  
110 conjunction with any non-ad valorem assessment authorized by  
111 this section if the property appraiser, tax collector, and local  
112 government agree.

113 (b) If the financing agreement provides for repayment  
114 through a surcharge on a utility or other municipal service bill  
115 in the form of a municipal lien, the utility provider may  
116 discontinue the delivery of all utility service if the surcharge  
117 is not paid. However, the financing agreement must set forth the  
118 terms and costs of such discontinuance, including the period  
119 after which discontinuance will be imposed.

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

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

127 (7) A local government may incur debt for the purpose of  
128 providing such improvements, payable from revenues received from



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129 the improved property or any other available revenue source as  
130 authorized by law.

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

133 (9) Before entering into a financing agreement, the local  
134 government shall reasonably verify that all property taxes and  
135 any other assessments levied on the same bill as property taxes  
136 have been paid and have not been delinquent for the past 3 years  
137 or the property owner's period of ownership, whichever is less;  
138 that there are no involuntary liens such as construction liens  
139 on the property; that no notices of default or other evidence of  
140 property-based debt delinquency have been recorded during the  
141 past 3 years or the property owner's period of ownership,  
142 whichever is less; and that the property owner is current on all  
143 mortgage debt on the property.

144 (10) A qualifying improvement shall be affixed to an  
145 existing building or facility that is part of the property and  
146 shall constitute an improvement to the building or facility or a  
147 fixture thereto. An agreement between a local government and a  
148 qualifying property owner may not cover projects in buildings or  
149 facilities under new construction or construction for which a  
150 certificate of occupancy or similar evidence of substantial  
151 completion of new construction or improvement has not been  
152 issued.

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

157 (12) Without the consent of the holders or loan servicers



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158 of any mortgage encumbering or otherwise secured by the  
159 property, the total amount of any non-ad valorem assessment or  
160 municipal or county lien for a property under this section may  
161 not exceed 20 percent of the just value of the property as  
162 determined by the county property appraiser.

163 (a) Notwithstanding any other provision of law, a non-ad  
164 valorem assessment or municipal or county lien for a qualifying  
165 improvement defined in subparagraph (2)(b) 1. or 2. which is  
166 supported by an energy audit is not subject to the limits in  
167 this subsection if the audit demonstrates that the annual energy  
168 savings from the qualified improvement equals or exceeds the  
169 annual repayment amount of the non-ad valorem assessment or  
170 municipal or county lien.

171 (b) A local government may adopt alternate parameters to  
172 those specified in this subsection to conform to local needs and  
173 conditions after conducting a public hearing resulting in a  
174 finding of the need for such changes due to local needs and  
175 conditions.

176 (13) At least 30 days before entering into a financing  
177 agreement, the property owner shall provide to the holders or  
178 loan servicers of any existing mortgages encumbering or  
179 otherwise secured by the property notice of intent to enter into  
180 a financing agreement, together with the maximum principal  
181 amount to be financed and the maximum annual assessment  
182 necessary to repay such amount. A provision of any agreement  
183 between a mortgagee or other lienholder and a property owner or  
184 otherwise now or hereafter binding upon a property owner  
185 allowing for acceleration of payment of the mortgage, note, or  
186 lien or other unilateral modification solely as a result of



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187 entering into a financing agreement, as provided for in this  
188 section, is not enforceable. This subsection does not limit the  
189 authority of the holder or loan servicer to increase the  
190 required monthly escrow by an amount necessary to annually pay  
191 the qualifying improvement assessment.

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

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

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

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

202 And the title is amended as follows:

203 Delete everything before the enacting clause  
204 and insert:

205 A bill to be entitled  
206 An act relating to energy improvement districts;  
207 creating s. 163.08, F.S.; providing for supplemental  
208 authority to local governments regarding improvements  
209 to real property; providing legislative findings and  
210 intent; defining "local government," "qualifying  
211 improvement," "energy conservation and efficiency  
212 improvement," "renewable energy improvement," and  
213 "wind resistance improvement"; authorizing a local  
214 government to levy a non-ad valorem assessment to fund  
215 a qualifying improvement; authorizing a property owner





216 to enter into a financing agreement with a local  
217 government to finance a qualifying improvement;  
218 authorizing a local government to collect for such  
219 purpose through a non-ad valorem assessment; providing  
220 exceptions; providing for discontinuance of utility  
221 service under certain circumstances if the financing  
222 agreement provides for repayment through a utility  
223 bill; authorizing a local government to enter into a  
224 partnership with one or more local governments for the  
225 purpose of providing and financing qualifying  
226 improvements; authorizing a for-profit entity or a  
227 not-for-profit organization to administer a qualifying  
228 improvement program on behalf of and at the discretion  
229 of the local government; authorizing a local  
230 government to incur debt payable from revenues  
231 received from the improved property; requiring that a  
232 local government verify past payment delinquencies and  
233 involuntary liens on the property; requiring that a  
234 qualifying improvement be affixed to an existing  
235 building or facility on the property and be performed  
236 by a properly certified or registered contractor;  
237 limiting the total amount of a non-ad valorem  
238 assessment or a municipal or county lien; providing  
239 exceptions; requiring that a property owner provide  
240 certain parties with notice of intent to enter into a  
241 financing agreement, the maximum principal amount to  
242 be financed, and the maximum annual assessment needed  
243 to repay that amount; prohibiting acceleration of a  
244 mortgage under certain circumstances; providing that



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245 certain provisions of state law do not limit or  
246 prohibit any local government from exercising certain  
247 authority; providing for statutory construction  
248 regarding a local government's home-rule authority;  
249 providing an effective date.