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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2010	.	
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The Policy and Steering Committee on Ways and Means (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 for improvements to real property.-

(1) (a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to require, in part, that the state reduce its energy requirements through enhanced conservation and efficiency



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

33 (b) The Legislature finds that all energy-consuming-  
34 improved properties that are not using energy conservation  
35 strategies contribute to the burden affecting all improved  
36 property resulting from fossil fuel energy production. Improved  
37 property that has been retrofitted with energy-related  
38 qualifying improvements receives the special benefit of  
39 alleviating the property's burden from energy consumption. All  
40 improved properties not protected from wind damage by wind-  
41 resistance qualifying 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 In order to make qualifying improvements more affordable and  
51 assist property owners who wish to undertake such improvements,  
52 the Legislature finds that there is a compelling state interest  
53 in enabling property owners to voluntarily finance such  
54 improvements with local government assistance.

55 (c) The Legislature determines that the actions authorized  
56 under this section, including, but not limited to, the financing  
57 of qualifying improvements through the execution of financing  
58 agreements and the related imposition of voluntary assessments  
59 are reasonable and necessary to serve and achieve a compelling  
60 state interest and are necessary for the prosperity and welfare  
61 of the state and its property owners and inhabitants.

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

63 (a) "Local government" means a county, municipality, or  
64 special district defined as a dependent district pursuant to s.  
65 189.403 or a special district created by two or more local  
66 general-purpose governments pursuant to s. 163.01.

67 (b) "Qualifying improvement" includes any:

68 1. Energy conservation and efficiency improvement, which is  
69 a measure to reduce consumption through conservation or a more  
70 efficient use of electricity, natural gas, propane, or other



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71 forms of energy on the property, including, but not limited to,  
72 air sealing; installation of insulation; installation of energy-  
73 efficient heating, cooling, or ventilation systems; building  
74 modifications to increase the use of daylight; replacement of  
75 windows; installation of energy controls or energy recovery  
76 systems; installation of electric vehicle charging equipment;  
77 and installation of efficient lighting equipment.

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

83 3. Wind-resistance improvement, which includes, but is not  
84 limited to:

85 a. Improving the strength of the roof-deck attachment;

86 b. Creating a secondary water barrier to prevent water  
87 intrusion;

88 c. Installing wind-resistant shingles;

89 d. Installing gable-end bracing;

90 e. Reinforcing roof-to-wall connections;

91 f. Installing storm shutters; or

92 g. Installing opening protections.

93 (3) A local government may levy non-ad valorem assessments  
94 to fund qualifying improvements.

95 (4) Subject to local government ordinance or resolution, a  
96 property owner may apply to the local government for funding to  
97 finance a qualifying improvement and enter into a financing  
98 agreement with the local government. Costs incurred by the local  
99 government for such purpose may be collected as a non-ad valorem



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100 assessment. A non-ad valorem assessment shall be collected  
101 pursuant to s. 197.3632, and notwithstanding s. 197.3632(8)(a),  
102 shall not be subject to discount for early payment. However, the  
103 notice and adoption requirements of s. 197.3632(4) do not apply  
104 if this section is used and complied with, and the initial  
105 resolution, publication of notice, and mailed notices to the  
106 property appraiser, tax collector, and Department of Revenue  
107 required by s. 197.3632(3)(a) may be provided on or before  
108 August 15 in conjunction with any non-ad valorem assessment  
109 authorized by this section, if the property appraiser, tax  
110 collector, and local government agree.

111 (5) Pursuant to this section or as otherwise provided by  
112 law or pursuant to a local government's home rule power, a local  
113 government may enter into a partnership with one or more local  
114 governments for the purpose of providing and financing  
115 qualifying improvements.

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

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

123 (8) A local government may enter into a financing agreement  
124 only with the record owner of the affected property. Any  
125 financing agreement entered into pursuant to this section or a  
126 summary memorandum of such agreement shall be recorded in the  
127 public records of the county within which the property is  
128 located by the sponsoring unit of local government within 5 days



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129 after execution of the agreement. The recorded agreement shall  
130 provide constructive notice that the assessment to be levied on  
131 the property constitutes a lien of equal dignity to county taxes  
132 and assessments from the date of recordation.

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

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

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



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

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

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



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187 by an amount necessary to annually pay the qualifying  
188 improvement assessment.

189 (14) Each contract for the sale of a parcel of real  
190 property for which a non-ad valorem assessment has been imposed  
191 under the authority of this section within the local government  
192 shall include, immediately prior to the space reserved in the  
193 contract for the signature of the purchaser, the following  
194 disclosure statement in boldfaced and conspicuous type that is  
195 larger than the type in the remaining text of the contract:

196  
197 "THE ... (name of local government) ... HAS IMPOSED A NON-AD  
198 VALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN  
199 ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER  
200 ASSESSMENTS PROVIDED FOR BY LAW."

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

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

209 Section 2. This act shall take effect upon becoming a law.

210  
211 ===== T I T L E A M E N D M E N T =====

212 And the title is amended as follows:

213 Delete everything before the enacting clause  
214 and insert:

215 A bill to be entitled





216 An act relating to qualifying improvements to real  
217 property; creating s. 163.08, F.S.; providing  
218 legislative findings and intent; providing  
219 definitions; authorizing a local government to levy  
220 non-ad valorem assessments to fund certain  
221 improvements; authorizing a property owner to apply  
222 for funding and enter into a financing agreement with  
223 a local government to finance certain improvements;  
224 authorizing a local government to collect moneys for  
225 such purposes through non-ad valorem assessments;  
226 providing collection requirements; authorizing local  
227 governments to enter into partnerships with other  
228 local governments to provide and finance certain  
229 improvements; authorizing a qualifying improvement  
230 program to be administered by a for-profit entity or  
231 not-for-profit organization under certain  
232 circumstances; authorizing a local government to incur  
233 debt payable from revenues received from the improved  
234 property; providing a financing restriction for local  
235 governments; requiring a financial agreement to be  
236 recorded in a county's public records within 5 days  
237 after execution of the agreement; specifying  
238 responsibilities for local governments before entering  
239 into financing agreements; requiring qualifying  
240 improvements to be affixed to a building or facility  
241 on the property and be performed by a properly  
242 certified or registered contractor; excluding certain  
243 projects from financing agreement coverage; limiting  
244 the amount of the non-ad valorem assessment to a



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245 percentage of the just value of the property;  
246 providing exceptions; specifying information to be  
247 provided to property owners before entering into  
248 financing agreements; prohibiting acceleration of a  
249 mortgage under certain circumstances; providing  
250 assessment disclosure requirements; specifying  
251 unenforceability of certain agreement provisions;  
252 providing for construction preserving a local  
253 government's home rule authority; providing an  
254 effective date.