

By the Policy and Steering Committee on Ways and Means; the
Committees on Finance and Tax; and Community Affairs; and
Senator Bennett

576-05317-10

20102322c3

1 A bill to be entitled
2 An act relating to qualifying improvements to real
3 property; creating s. 163.08, F.S.; providing
4 legislative findings and intent; providing
5 definitions; authorizing a local government to levy
6 non-ad valorem assessments to fund certain
7 improvements; authorizing a property owner to apply
8 for funding and enter into a financing agreement with
9 a local government to finance certain improvements;
10 authorizing a local government to collect moneys for
11 such purposes through non-ad valorem assessments;
12 providing collection requirements; authorizing local
13 governments to enter into partnerships with other
14 local governments to provide and finance certain
15 improvements; authorizing a qualifying improvement
16 program to be administered by a for-profit entity or
17 not-for-profit organization under certain
18 circumstances; authorizing a local government to incur
19 debt payable from revenues received from the improved
20 property; providing a financing restriction for local
21 governments; requiring a financial agreement to be
22 recorded in a county's public records within 5 days
23 after execution of the agreement; specifying
24 responsibilities for local governments before entering
25 into financing agreements; requiring qualifying
26 improvements to be affixed to a building or facility
27 on the property and be performed by a properly
28 certified or registered contractor; excluding certain
29 projects from financing agreement coverage; limiting

576-05317-10

20102322c3

30 the amount of the non-ad valorem assessment to a
31 percentage of the just value of the property;
32 providing exceptions; specifying information to be
33 provided to property owners before entering into
34 financing agreements; prohibiting acceleration of a
35 mortgage under certain circumstances; providing
36 assessment disclosure requirements; specifying
37 unenforceability of certain agreement provisions;
38 providing for the act to be construed as preserving a
39 local government's home rule authority; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 163.08, Florida Statutes, is created to
45 read:

46 163.08 Supplemental authority for improvements to real
47 property.-

48 (1) (a) In chapter 2008-227, Laws of Florida, the
49 Legislature amended the energy goal of the state comprehensive
50 plan to require, in part, that the state reduce its energy
51 requirements through enhanced conservation and efficiency
52 measures in all end-use sectors and reduce atmospheric carbon
53 dioxide by promoting an increased use of renewable energy
54 resources. That act also declared it the public policy of the
55 state to play a leading role in developing and instituting
56 energy management programs that promote energy conservation,
57 energy security, and the reduction of greenhouse gases. In
58 addition to establishing policies to promote the use of

576-05317-10

20102322c3

59 renewable energy, the Legislature provided for a schedule of
60 increases in the energy performance of buildings subject to the
61 Florida Energy Efficiency Code for Building Construction. In
62 chapter 2008-191, Laws of Florida, the Legislature adopted new
63 energy conservation and greenhouse gas reduction comprehensive
64 planning requirements for local governments. In the 2008 general
65 election, the voters of this state approved a constitutional
66 amendment authorizing the Legislature, by general law, to
67 prohibit consideration of any change or improvement made for the
68 purpose of improving a property's resistance to wind damage or
69 the installation of a renewable energy source device in the
70 determination of the assessed value of residential real
71 property.

72 (b) The Legislature finds that all energy-consuming-
73 improved properties that are not using energy conservation
74 strategies contribute to the burden affecting all improved
75 property resulting from fossil fuel energy production. Improved
76 property that has been retrofitted with energy-related
77 qualifying improvements receives the special benefit of
78 alleviating the property's burden from energy consumption. All
79 improved properties not protected from wind damage by wind-
80 resistance qualifying improvements contribute to the burden
81 affecting all improved property resulting from potential wind
82 damage. Improved property that has been retrofitted with wind-
83 resistance qualifying improvements receives the special benefit
84 of reducing the property's burden from potential wind damage.
85 Further, the installation and operation of qualifying
86 improvements not only benefit the affected properties for which
87 the improvements are made, but also assist in fulfilling the

576-05317-10

20102322c3

88 goals of the state's energy and hurricane mitigation policies.
89 In order to make qualifying improvements more affordable and
90 assist property owners who wish to undertake such improvements,
91 the Legislature finds that there is a compelling state interest
92 in enabling property owners to voluntarily finance such
93 improvements with local government assistance.

94 (c) The Legislature determines that the actions authorized
95 under this section, including, but not limited to, the financing
96 of qualifying improvements through the execution of financing
97 agreements and the related imposition of voluntary assessments
98 are reasonable and necessary to serve and achieve a compelling
99 state interest and are necessary for the prosperity and welfare
100 of the state and its property owners and inhabitants.

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

102 (a) "Local government" means a county, municipality, or
103 special district defined as a dependent district pursuant to s.
104 189.403 or a special district created by two or more local
105 general-purpose governments pursuant to s. 163.01.

106 (b) "Qualifying improvement" includes any:

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

576-05317-10

20102322c3

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

122 3. Wind-resistance improvement, which includes, but is not
123 limited to:

- 124 a. Improving the strength of the roof-deck attachment;
125 b. Creating a secondary water barrier to prevent water
126 intrusion;
127 c. Installing wind-resistant shingles;
128 d. Installing gable-end bracing;
129 e. Reinforcing roof-to-wall connections;
130 f. Installing storm shutters; or
131 g. Installing opening protections.

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

134 (4) Subject to local government ordinance or resolution, a
135 property owner may apply to the local government for funding to
136 finance a qualifying improvement and enter into a financing
137 agreement with the local government. Costs incurred by the local
138 government for such purpose may be collected as a non-ad valorem
139 assessment. A non-ad valorem assessment shall be collected
140 pursuant to s. 197.3632, and notwithstanding s. 197.3632(8)(a),
141 shall not be subject to discount for early payment. However, the
142 notice and adoption requirements of s. 197.3632(4) do not apply
143 if this section is used and complied with, and the initial
144 resolution, publication of notice, and mailed notices to the
145 property appraiser, tax collector, and Department of Revenue

576-05317-10

20102322c3

146 required by s. 197.3632(3) (a) may be provided on or before
147 August 15 in conjunction with any non-ad valorem assessment
148 authorized by this section, if the property appraiser, tax
149 collector, and local government agree.

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

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

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

162 (8) A local government may enter into a financing agreement
163 only with the record owner of the affected property. Any
164 financing agreement entered into pursuant to this section or a
165 summary memorandum of such agreement shall be recorded in the
166 public records of the county within which the property is
167 located by the sponsoring unit of local government within 5 days
168 after execution of the agreement. The recorded agreement shall
169 provide constructive notice that the assessment to be levied on
170 the property constitutes a lien of equal dignity to county taxes
171 and assessments from the date of recordation.

172 (9) Before entering into a financing agreement, the local
173 government shall reasonably determine that all property taxes
174 and any other assessments levied on the same bill as property

576-05317-10

20102322c3

175 taxes are paid and have not been delinquent for the preceding 3
176 years or the property owner's period of ownership, whichever is
177 less; that there are no involuntary liens, including, but not
178 limited to, construction liens on the property; that no notices
179 of default or other evidence of property-based debt delinquency
180 have been recorded during the preceding 3 years or the property
181 owner's period of ownership, whichever is less; and that the
182 property owner is current on all mortgage debt on the property.

183 (10) A qualifying improvement shall be affixed to a
184 building or facility that is part of the property and shall
185 constitute an improvement to the building or facility or a
186 fixture attached to the building or facility. An agreement
187 between a local government and a qualifying property owner may
188 not cover wind-resistance improvements in buildings or
189 facilities under new construction or construction for which a
190 certificate of occupancy or similar evidence of substantial
191 completion of new construction or improvement has not been
192 issued.

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

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

203 (b) Notwithstanding paragraph (a), a non-ad valorem

576-05317-10

20102322c3

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

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

228 (14) Each contract for the sale of a parcel of real
229 property for which a non-ad valorem assessment has been imposed
230 under the authority of this section within the local government
231 shall include, immediately prior to the space reserved in the
232 contract for the signature of the purchaser, the following

576-05317-10

20102322c3

233 disclosure statement in boldfaced and conspicuous type that is
234 larger than the type in the remaining text of the contract:

235

236 "THE ... (name of local government) ... HAS IMPOSED A NON-AD
237 VALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN
238 ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER
239 ASSESSMENTS PROVIDED FOR BY LAW."

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

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

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