

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to improvements to real property;
3 amending s. 163.08, F.S.; defining terms; revising the
4 term "qualifying improvement"; specifying that a
5 financing agreement may not be used to fund ancillary
6 work except under certain conditions; specifying
7 conditions that must be determined before a financing
8 agreement may be approved; specifying that the failure
9 of a property owner to disclose specified information
10 does not invalidate a financing agreement; specifying
11 that the existence of a prior financing agreement is
12 not evidence meeting program requirements; specifying
13 the information that must be verified for residential
14 properties regarding a property owner's ability to pay
15 the annual assessment; providing requirements for a
16 program administrator's review of a property owner's
17 ability to pay; specifying how the fair market value
18 on the property on which a qualifying improvement will
19 be placed is derived and requiring such value to be
20 disclosed to the property owner before execution of a
21 financing agreement; requiring a program administrator
22 to orally review specified information to specified
23 persons before the execution of a financing agreement
24 and record and receive written acknowledgement of such
25 provision; prohibiting the use of a prerecorded device
26 for certain purposes; requiring the program
27 administrator to develop additional procedures to
28 protect vulnerable adults; requiring certain local
29 governments to develop a written disclosure form that

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30 contains specified information; requiring that such
31 form be provided to a property owner before executing
32 the property agreement; requiring that certain
33 statements on such form be individually acknowledged;
34 requiring a program administrator to provide a
35 cancellation form within a specified period;
36 specifying situations in which a contract to sell or
37 install a qualifying improvement on a residential
38 property is unenforceable; prohibiting a contractor
39 from beginning work under such a contract; providing
40 procedures for returning or restoring residential
41 property in specified situations in which a contract
42 is unenforceable; specifying circumstances where an
43 otherwise unenforceable contract is enforceable;
44 specifying practices in which a program administrator
45 may not engage; providing exceptions; specifying
46 actions that a program administrator, contractor, or
47 third party may not engage in regarding financing
48 agreements; specifying the circumstance in which a
49 program administrator may make final payment to a
50 contractor; requiring a program to have publicly
51 available specified information regarding qualifying
52 improvements; authorizing a program administrator to
53 include additional products under specified
54 conditions; specifying that agreements need not be
55 notarized; requiring the qualifying improvements
56 program to make an annual report available on its
57 website; specifying items to be included in such
58 report; providing an effective date.

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

Section 1. Subsections (7) and (10) through (16), of section 163.08, Florida Statutes, are redesignated as subsections (17), (19) through (24), and (26), respectively, present subsection (8) is redesignated as subsection (18) and amended, present subsections (2) and (9) are amended, and new subsections (7) through (16) and (25) are added to that section, to read:

163.08 Supplemental authority for improvements to real property.—

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

(a) "Facility" means any portion of a building, structure, or site improvement located on a site as defined in Section 202 of the 2017 Florida Building Code.

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

(c) "Non-residential property" means any property type that is not a residential property.

(d) "Program administrator" means an entity which administers a qualifying improvement program for a local government.

(e) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to,

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88 air sealing; installation of insulation; installation of energy-
89 efficient heating, cooling, or ventilation systems; building
90 modifications to increase the use of daylight; replacement of
91 windows; installation of energy controls or energy recovery
92 systems; installation of electric vehicle charging equipment;
93 and installation of efficient lighting equipment.

94 2. Renewable energy improvement, which is the installation
95 of any system in which the electrical, mechanical, or thermal
96 energy is produced from a method that uses one or more of the
97 following fuels or energy sources: hydrogen, solar energy,
98 geothermal energy, bioenergy, and wind energy.

99 3. Wind resistance improvement, which includes the products
100 and installation for, ~~but is not limited to:~~

- 101 a. Improving the strength of the roof deck attachment;
102 b. Creating a secondary water barrier to prevent water
103 intrusion;
104 c. ~~Installing~~ Wind-resistant shingles;
105 d. ~~Installing~~ Gable-end bracing;
106 e. Reinforcing roof-to-wall connections;
107 f. ~~Installing~~ Storm shutters; or
108 g. ~~Installing~~ Opening protections.

109 (f) "Qualifying improvements program" means a program that
110 includes financing and administration activities undertaken by a
111 program administrator for property owners to purchase and
112 install qualifying improvements on a building or facility.

113 (g) "Residential property" means real estate on which any
114 of the following is located:

- 115 1. One single-family residential unit or one multifamily
116 structure containing one to four residential units.

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117 2. Single-family residential units such as condominiums,
118 townhouses, timeshares, mobile homes, or houses in a subdivision
119 that may be legally sold, leased, or otherwise conveyed on a
120 unit-by-unit basis, regardless of whether the units are a part
121 of a larger building or parcel containing more than four
122 residential units.

123 (7) A financing agreement may not be used to fund ancillary
124 work unless the scope of the ancillary work is directly related
125 to and necessary for the installation and safe operation of a
126 qualifying improvement and the cost of the ancillary work does
127 not exceed the cost of the individual qualifying improvement to
128 which it is directly related.

129 (8) A program administrator may not approve a financing
130 agreement before reasonably determining that:

131 (a) The property taxes and other assessments on the
132 property are current and that the property owner has not been
133 delinquent in making such payments for the preceding 3 years or
134 for the time the property owner has owned the property,
135 whichever is less.

136 (b) The property has no recorded and outstanding
137 involuntary liens in excess of \$1,000.

138 (c) There are no notices of default currently recorded on
139 the property which have not been rescinded.

140 (d) For residential properties, the property owner has not
141 been subject to a bankruptcy proceeding within the last 7 years
142 unless it was discharged or dismissed more than 2 years before
143 the application date.

144 (e) For residential properties, the property owner is
145 current on nonmortgage debt excluding medical debt, and has had

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146 no more than one late payment exceeding 30 days during the 12
147 months immediately preceding the application date.

148 (f) The property owner is current on all mortgage debt on
149 the property and has had no more than one late payment exceeding
150 30 days during the 12 months immediately preceding the
151 application date.

152 (g) The property is within the geographic boundaries of the
153 applicable qualifying improvements program.

154 (h) The total financed amount and mortgage-related debt on
155 the property does not exceed 97 percent of the fair market value
156 of the property, as determined pursuant to subsection (10).

157 (i) The term of the financing agreement does not exceed the
158 estimated useful life of the qualifying improvement for which
159 the majority of the financing has been provided. The program
160 administrator shall determine the useful life using established
161 third-party standards or certification criteria from government
162 agencies or nationally recognized standards and testing
163 organizations.

164 (j) The program administrator must obtain a statement from
165 the property owner as to whether the property owner has obtained
166 or sought to obtain additional qualifying improvements on the
167 same property which have not yet been recorded.

168
169 The failure of a property owner to disclose information
170 specified in this subsection does not invalidate a financing
171 agreement or any obligation thereunder, even if the total
172 financed amount of the qualifying improvement exceeds the amount
173 that would otherwise be authorized under paragraph (h) or
174 subsection (18). The existence of a prior qualifying improvement

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175 assessment or a prior financing agreement is not evidence that
176 the financing agreement under consideration is affordable or
177 meets other program requirements.

178 (9) In addition to the determinations in subsection (8),
179 and before a program administrator approves a qualifying
180 improvement on a residential property, he or she must use
181 information contained in the property owner's application,
182 reasonably reliable third-party records, or an automated
183 verification system to reasonably determine whether the property
184 owner has the ability to pay the annual assessment for the
185 qualifying improvement. The program administrator must review
186 the property owner's household income, housing expenses, assets,
187 and other debt obligations. If the program administrator uses an
188 automated verification system, it must be a system that can
189 verify the property owner's income, is not based on predictive
190 or estimation methodologies, and has been determined sufficient
191 for such verification purposes by a federal mortgage lending
192 authority or regulator. In reviewing the property owner's
193 ability to pay, the program administrator:

194 (a) When determining the household income, may include the
195 income of any property owner 18 years of age or older whose name
196 is on the property title. If a person's income is considered,
197 that person's debt obligations must also be considered.

198 (b) May not consider the equity of the property that will
199 secure the assessment.

200 (c) Shall determine the property owner's debt obligations
201 using reasonably reliable third-party records, including at
202 least one consumer credit report from an agency that meets the
203 requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be

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204 reviewed must include:

205 1. Secured and unsecured debt.

206 2. Housing expenses. A program administrator shall make a
207 reasonable estimate of the basic housing expenses based on the
208 number of persons in the household.

209 3. Stated alimony or child support obligations.

210 (d) Shall determine whether the property owner has
211 sufficient income to pay the annual assessment and whether he or
212 she has sufficient residual income to meet his or her household
213 living expenses.

214 (10) A program administrator must derive the fair market
215 value of the property using one of the following methods and
216 must disclose the value to the property owner before the
217 property owner executes the financing agreement:

218 (a) The value derived using an automated valuation model
219 provided by a third-party vendor that contains estimation models
220 with confidence scores, if available. To use this method:

221 1. The third-party vendor must provide regular statistical
222 calibration.

223 2. The program administrator must use at least three
224 automated valuation models for each property. If a model
225 provides a range of values, the value for the model must be the
226 average between the high and low values.

227 3. The program administrator must use the value with the
228 highest confidence score for a property. If an automated
229 valuation model does not provide a confidence score for a
230 subject property, the program administrator must use the average
231 of all estimated values to determine the fair market value.

232 (b) The property appraiser's determination of just value.

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233 (c) An appraisal prepared by an independent third party, a
234 broker price opinion, a comparative market analysis, or any
235 other methodology commonly used in the real estate finance
236 industry.

237 (11) (a) Before a residential property owner executes a
238 financing agreement, the program administrator must orally
239 review the key terms of the financing agreement, using plain
240 language, with at least one property owner or the verified
241 authorized representative of the owner, and that person must
242 provide written acknowledgment that the oral review was given.
243 The program administrator may not use a prerecorded device to
244 convey any required disclosures.

245 (b) The program administrator must record the oral review
246 in an audio format and protect the information as required by
247 law.

248 (c) The program administrator shall develop additional
249 procedures under this subsection to prevent exploitation of
250 vulnerable adults.

251 (12) (a) Each local government that offers a qualifying
252 improvements program must develop a written disclosure form that
253 must be provided to the residential property owner before he or
254 she executes the financing agreement and which contains the key
255 terms of the agreement, including:

256 1. A description of the qualifying improvement and
257 ancillary work;

258 2. The total financed amount, including the cost of the
259 qualifying improvement, ancillary work, installation, program
260 fees, and prepaid interest, if any;

261 3. The annual assessment process and yearly schedule;

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- 262 4. The amount of the annual assessment;
263 5. The term of the total financed amount;
264 6. The interest rate for the financed amount; and
265 7. The annual percentage rate.
- 266 (b) The disclosure form must also contain the following
267 statements which must be individually acknowledged by the
268 residential property owner:
- 269 1. "I understand that if I sell or refinance the property,
270 I may be required to pay off the outstanding financed amount as
271 a condition of the sale or the refinance."
- 272 2. "I understand that I cannot be assessed a penalty if I
273 prepay the outstanding financed amount."
- 274 3. "I understand that utility savings are not guaranteed
275 and will not reduce the assessment payments or total financed
276 amount."
- 277 4. "I understand that the annual assessment will be paid
278 when property taxes are paid and will result in a lien being
279 placed on my property."
- 280 5. "I understand that the annual assessment will be added
281 to my property tax bill, and if I pay my property taxes through
282 my mortgage payment using an escrow or impound account, I should
283 notify my mortgage lender, so that my monthly mortgage payment
284 can be adjusted to cover the increased property tax bill."
- 285 6. "I understand that if I fail to pay the annual
286 assessment, I may incur penalties and fees, and the local
287 government could issue a tax certificate which might result in
288 me losing my property."
- 289 7. "I understand that I should seek professional tax advice
290 if I have questions regarding tax credits, tax deductibility, or

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291 the tax impact on the annual assessment or the financing
292 agreement."

293 8. "I understand that I have 3 days to cancel the financing
294 agreement. The 3-day-right-to-cancel period expires on midnight
295 of the third business day after I sign the agreement."

296 (c) In addition, a program administrator must provide a
297 printed cancellation form to the residential property owner no
298 later than the time the property owner signs the financing
299 agreement which would allow the property owner to cancel the
300 contract.

301 (13) (a) A contract to sell or install a qualifying
302 improvement that is related to an application for financing in a
303 qualifying improvements program for a residential property is
304 unenforceable and a contractor may not begin work under such a
305 contract if:

306 1. The property owner would not have entered into the
307 contract but for the belief that the qualifying improvement or
308 its installation would be paid under the financing agreement; or

309 2. The property owner applied for, accepted, and canceled a
310 qualifying improvement financing agreement within the 3-day
311 right-to-cancel period set forth in subparagraph (12) (b) 8.

312 (b) If a contractor has initiated work on a residential
313 property under an unenforceable contract as determined under
314 paragraph (a), the contractor:

315 1. May not receive compensation for that work under the
316 financing agreement.

317 2. Shall restore the property to its original condition at
318 no cost to the property owner.

319 3. Shall immediately return any money, property, and other

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320 consideration given by the property owner. If the property owner
321 provided any property and the contractor does not or cannot
322 return it, the contractor shall immediately return the fair
323 market value of the property or its value as designated in the
324 contract, whichever is greater.

325 (c) If the contractor has delivered chattel or fixtures to
326 the residential property pursuant to an unenforceable contract,
327 the contractor shall have 90 days from the date the contract was
328 executed to retrieve the chattel or fixtures provided that:

329 1. The contractor has fulfilled the requirements of
330 subparagraphs (b)2. and 3.

331 2. The chattel and fixtures can be removed at the
332 contractor's expense without damaging the property owner's
333 property and can be practically returned.

334 (d) The residential property owner may retain any chattel
335 or fixtures provided pursuant to an unenforceable contract if a
336 contractor fails to comply with this subsection.

337 (e) A contract which is otherwise unenforceable under this
338 subsection remains enforceable if the residential property owner
339 waives his or her right to cancel the contract, allows the
340 contractor to proceed with the installation of the qualifying
341 improvement, and cancels the financing agreement.

342 (14) (a) A program administrator may not authorize a
343 contractor or third party to advertise the availability of
344 financing agreements or solicit property owners on behalf of the
345 program administrator, unless:

346 1. The contractor or third party maintains the appropriate
347 registration or certification from the Construction Industry
348 Licensing Board or any other permit, license, or registration

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349 required to conduct business in the jurisdiction where it
350 operates, and provides proof of having the required bond and
351 insurance coverage amounts; and

352 2. The program administrator obtains the contractor's or
353 third party's written agreement that the contractor or third
354 party will meet applicable laws and rules and qualifying
355 improvement program policies and procedures, including those on
356 advertising and marketing.

357 (b) A program administrator may not provide any direct or
358 indirect cash payment or thing of material value to a contractor
359 in excess of the actual price charged by that contractor for the
360 sale and installation of the qualifying improvements that are
361 financed by a financing agreement. However, a program
362 administrator may provide information or service to a contractor
363 to facilitate the installation of a qualifying improvement for a
364 property owner.

365 (c) A program administrator may not reimburse a contractor
366 for its expenses for advertising and marketing campaigns and
367 materials. A program administrator and a contractor may share
368 expenses in connection with joint advertising and marketing
369 campaigns and materials, if the expenses are shared on a
370 commercially reasonable basis.

371 (d) A program administrator may not provide any direct cash
372 payment or other thing of material value to a property owner
373 explicitly conditioned upon the property owner entering into a
374 financing agreement. However, a program administrator may offer
375 programs or promotions that provide reduced fees or interest
376 rates if the reduced fees or interest rates are reflected in the
377 financing agreements and are not provided to the property owners

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378 as cash consideration.

379 (e) A program administrator, contractor, or a third party
380 may not make any representation as to the tax deductibility of a
381 financing agreement unless that representation is consistent
382 with representations, statements, or opinions of the Internal
383 Revenue Service or an applicable state tax agency with regard to
384 the tax treatment of non-ad valorem assessments.

385 (f) A program administrator may not provide to a contractor
386 engaged in soliciting financing agreements on its behalf any
387 information that discloses the amount of funds for which a
388 property owner is eligible for qualifying improvements or the
389 amount of equity in a property.

390 (g) For residential properties, a contractor may not
391 provide a different price for a qualifying improvement financed
392 under this section than the contractor would provide if the
393 property owner paid for the improvement in cash.

394 (15) A program administrator may not make the final payment
395 to a contractor unless the property owner has signed a
396 certificate of completion.

397 (16) (a) The qualifying improvements program must make
398 available, on its website, an updated list of products that have
399 been approved by the local government as qualifying
400 improvements. The list shall, at a minimum, include the
401 following information for each product on that list:

402 1. A name or description of the product.

403 2. Eligibility criteria, including performance thresholds,
404 certification requirements, and installation criteria.

405 (b) A product may not be included on the list unless the
406 product meets one or more standards or certification criteria

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407 established by appropriate federal government agencies or by
408 credible third-party private organizations.

409 (c) A program administrator may include additional products
410 as part of an overall project for qualifying improvements that
411 are not included in the list of products if the following items
412 are available:

413 1. An application process, approved by the local
414 government, that allows a contractor or property owner to
415 request a product to be considered as a qualifying improvement;
416 and

417 2. Guidelines approved by the local government which the
418 program administrator will use in reviewing the application for
419 a custom improvement. The guidelines must identify minimum
420 requirements needed for approval of a custom improvement.

421 (18)(8) A local government may enter into a financing
422 agreement only with the record owner of the affected property.
423 Any financing agreement entered into pursuant to this section or
424 a summary memorandum of such agreement ~~must~~ shall be recorded in
425 the public records of the county within which the property is
426 located by the sponsoring unit of local government within 5 days
427 after execution of the agreement. The recorded agreement must
428 ~~shall~~ provide constructive notice that the assessment to be
429 levied on the property constitutes a lien of equal dignity to
430 county taxes and assessments from the date of recordation. An
431 agreement, including its supporting documents and disclosures,
432 entered into under this section, does not need to be notarized.

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

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436 ~~taxes are paid and have not been delinquent for the preceding 3~~
437 ~~years or the property owner's period of ownership, whichever is~~
438 ~~less; that there are no involuntary liens, including, but not~~
439 ~~limited to, construction liens on the property; that no notices~~
440 ~~of default or other evidence of property-based debt delinquency~~
441 ~~have been recorded during the preceding 3 years or the property~~
442 ~~owner's period of ownership, whichever is less; and that the~~
443 ~~property owner is current on all mortgage debt on the property.~~

444 (25) The qualifying improvements program must make
445 available on its website a report by December 31 each year
446 containing the following information, separated by city, county,
447 and zip code, and all methodologies and supporting assumptions
448 or sources relied upon in preparing the report:

449 (a) The number of qualifying improvements funded.

450 (b) The aggregate, average, and median dollar amounts of
451 annual and total qualifying improvements assessments funded.

452 (c) The percentage, the number, and the dollar value of
453 qualifying improvements assessments represented by the following
454 category types:

455 1. Energy efficiency;

456 2. Renewable energy; and

457 3. Wind resistance.

458 (d) The number of defaulted assessments including the total
459 number and defaulted amount, the number and dates of missed
460 payments, the total number of parcels defaulted and years in
461 default, and the percentage of defaults by total assessments.

462 (e) The total amount of energy saved, the total dollar
463 amount of such savings by property owners categorized by
464 qualifying improvements installed, the total number of energy

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465 savings improvements, and the number of improvements installed
466 that meet standards of the Energy Star program of the United
467 States Environmental Protection Agency, including the overall
468 average efficiency rating of installed products for each
469 category type specified in paragraph (c).

470 (f) The total amount of renewable energy produced
471 categorized by the type of qualifying improvement installed and
472 the total number of renewable energy installations, including
473 the average and median system size.

474 (g) Estimated amount of greenhouse gas emissions
475 reductions.

476 (h) Estimated number of jobs created.

477 (i) The number and percentage of homeowners 60 years of age
478 or older.

479 Section 2. This act shall take effect July 1, 2018.