

1 A bill to be entitled
2 An act relating to financing improvements to real
3 property; amending s. 163.08, F.S.; revising
4 legislative intent; defining and revising terms;
5 authorizing a residential or commercial property owner
6 to apply to a local government for funding to finance
7 an improvement and to enter into a financing agreement
8 with the local government; providing that a non-ad
9 valorem assessment on certain commercial property is
10 subject to a certain fee; specifying requirements of
11 the financing agreement for government commercial
12 property; specifying the determinations a local
13 government must make before entering into a financing
14 agreement for commercial properties; authorizing a
15 financing agreement to be executed for commercial
16 property under certain circumstances; restricting what
17 improvements may be covered in certain agreements
18 between local governments and commercial property
19 owners; specifying requirements for a local government
20 before entering into a financing agreement; revising
21 notice requirements regarding an owner's intent to
22 enter into a financing agreement; revising the
23 seller's disclosure statement for commercial
24 properties offered for sale; providing construction;
25 providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsections (2), (4), (8), (9), (10), (12), (13), and (14) of section 163.08, Florida Statutes, are amended, and subsection (17) is added to that section, to read:

163.08 Supplemental authority for improvements to real property.—

(1)

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property ~~that has been~~ retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved commercial property constructed or ~~that has been~~ retrofitted with resiliency qualifying improvements and improved residential property retrofitted with wind ~~resistance~~ qualifying improvements receive ~~receives~~ the special benefit of reducing the property's burden from potential ~~wind~~ damage.

51 Further, the installation and operation of qualifying
52 improvements not only benefit the affected properties for which
53 the improvements are made, but also assist in fulfilling the
54 goals of the state's energy and hurricane mitigation policies.
55 In order to make qualifying improvements more affordable and
56 assist property owners who wish to undertake such improvements,
57 the Legislature finds that there is a compelling state interest
58 in enabling property owners to voluntarily finance such
59 improvements with local government assistance.

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

61 (a) "Commercial property" means real property not defined
62 as residential property which will be or has been improved by a
63 qualifying improvement, including, but not limited to, the
64 following:

65 1. A multifamily residential property composed of five or
66 more dwelling units;

67 2. A commercial real property;

68 3. An industrial building or property;

69 4. An agricultural property;

70 5. A nonprofit-owned property;

71 6. A long-term care facility, including nursing homes and
72 assisted living facilities; or

73 7. A government commercial property.

74 (b) "Government commercial property" means real property
75 owned by a local government and leased to a nongovernmental

76 lessee where the usage by the lessee meets the definition of
 77 commercial property.

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

81 (d) "Nongovernmental lessee" means a person or an entity
 82 other than a local government which leases government commercial
 83 property.

84 (e)-(b) "Qualifying improvements": ~~improvement~~"

85 1. For residential property, includes any:

86 a.1. Energy conservation and efficiency improvement, which
 87 is a measure to reduce consumption through conservation or a
 88 more efficient use of electricity, natural gas, propane, or
 89 other forms of energy on the property, including, but not
 90 limited to, air sealing; installation of insulation;
 91 installation of energy-efficient heating, cooling, or
 92 ventilation systems; building modifications to increase the use
 93 of daylight; replacement of windows; installation of energy
 94 controls or energy recovery systems; installation of electric
 95 vehicle charging equipment; and installation of efficient
 96 lighting equipment.

97 b.2. Renewable energy improvement, which is the
 98 installation of any system in which the electrical, mechanical,
 99 or thermal energy is produced from a method that uses one or
 100 more of the following fuels or energy sources: hydrogen, solar

101 energy, geothermal energy, bioenergy, and wind energy.
 102 ~~c.3.~~ Wind resistance improvement, which includes, but is
 103 not limited to:
 104 ~~(I)a.~~ Improving the strength of the roof deck attachment;
 105 ~~(II)b.~~ Creating a secondary water barrier to prevent water
 106 intrusion;
 107 ~~(III)e.~~ Installing wind-resistant shingles;
 108 ~~(IV)d.~~ Installing gable-end bracing;
 109 ~~(V)e.~~ Reinforcing roof-to-wall connections;
 110 ~~(VI)f.~~ Installing storm shutters; or
 111 ~~(VII)g.~~ Installing opening protections.
 112 2. For commercial property, includes any:
 113 a. Energy conservation and efficiency improvement, which
 114 is a measure to reduce consumption through conservation or a
 115 more efficient use of electricity, natural gas, propane, or
 116 other forms of energy on the property, including, but not
 117 limited to, air sealing; installation of insulation;
 118 installation of energy-efficient heating, cooling, or
 119 ventilation systems; building modifications to increase the use
 120 of daylight; replacement of windows; installation of energy
 121 controls or energy recovery systems; installation of electric
 122 vehicle charging equipment; installation of efficient lighting
 123 equipment; or any other improvements necessary to achieve a
 124 sustainable building rating or compliance with a national model
 125 green building code.

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

131 c. Resiliency improvement, which includes, but is not
132 limited to:

133 (I) Improving the strength of the roof deck attachment;

134 (II) Creating a secondary water barrier to prevent water
135 intrusion;

136 (III) Installing wind-resistant shingles;

137 (IV) Installing gable-end bracing;

138 (V) Reinforcing roof-to-wall connections;

139 (VI) Installing storm shutters;

140 (VII) Installing opening protections;

141 (VIII) Creating or improving stormwater and flood
142 resiliency, including shoreline improvements; or

143 (IX) Making any other improvements necessary to achieve a
144 sustainable building rating or compliance with a national model
145 resiliency standard and any improvements to a structure to
146 achieve wind or flood insurance rate reductions, including
147 building elevation.

148 (f) "Residential property" means a residential real
149 property of four or fewer dwelling units which will be or has
150 been improved by a qualifying improvement.

151 (4) Subject to local government ordinance or resolution, a
 152 residential or commercial property owner may apply to the local
 153 government for funding to finance a qualifying improvement and
 154 enter into a financing agreement with the local government.
 155 Costs incurred by the local government for such purpose may be
 156 collected as a non-ad valorem assessment. A non-ad valorem
 157 assessment must ~~shall~~ be collected pursuant to s. 197.3632 and,
 158 notwithstanding s. 197.3632 (8) (a), is ~~shall~~ not ~~be~~ subject to
 159 discount for early payment. However, the notice and adoption
 160 requirements of s. 197.3632 (4) do not apply if this section is
 161 used and complied with, and the intent resolution, publication
 162 of notice, and mailed notices to the property appraiser, tax
 163 collector, and Department of Revenue required by s.
 164 197.3632 (3) (a) may be provided on or before August 15 in
 165 conjunction with any non-ad valorem assessment authorized by
 166 this section, if the property appraiser, tax collector, and
 167 local government agree. A non-ad valorem assessment on a
 168 commercial property securing financing for a qualifying
 169 improvement, notwithstanding ss. 192.091 (2) (b) and
 170 197.3632 (8) (c), is subject to a maximum annual fee of 1 percent
 171 of the annual non-ad valorem assessment collected or \$5,000,
 172 whichever is less.

173 (8) A local government may enter into a financing
 174 agreement to finance or refinance a qualifying improvement only
 175 with the record owner of the affected property. For government

176 commercial property, the financing agreement must be executed by
 177 the nongovernmental lessee with the written consent of the
 178 governmental lessor. Evidence of such consent must be provided
 179 to the local government. The financing agreement with a
 180 nongovernmental lessee must provide that the nongovernmental
 181 lessee is the only party obligated to pay the assessment. Any
 182 financing agreement entered into pursuant to this section or a
 183 summary memorandum of such agreement must ~~shall~~ be recorded in
 184 the public records of the county within which the property is
 185 located by the sponsoring unit of local government within 5 days
 186 after execution of the agreement. The recorded agreement
 187 provides ~~shall provide~~ constructive notice that the assessment
 188 to be levied on the property constitutes a lien of equal dignity
 189 to county taxes and assessments from the date of recordation.

190 (9) (a) Before entering into a financing agreement for a
 191 residential property, the local government shall reasonably
 192 determine that all of the following conditions have been met:

193 1. ~~that~~ All property taxes and any other assessments
 194 levied on the same bill as property taxes are paid and have not
 195 been delinquent for the preceding 3 years or the property
 196 owner's period of ownership, whichever is less. †

197 2. ~~that~~ There are no involuntary liens, including, but not
 198 limited to, construction liens on the property. †

199 3. ~~that~~ No notices of default or other evidence of
 200 property-based debt delinquency have been recorded during the

201 preceding 3 years or the property owner's period of ownership,
 202 whichever is less.

203 4. ~~and that~~ The property owner is current on all mortgage
 204 debt on the property.

205 (b) Before entering into a financing agreement for a
 206 commercial property, the local government shall reasonably
 207 determine that all of the following conditions have been met:

208 1. All property taxes and any other assessments levied on
 209 the same bill as property taxes are current.

210 2. There are no involuntary liens greater than \$10,000,
 211 including, but not limited to, construction liens on the
 212 property.

213 3. No notices of default or other evidence of property-
 214 based debt delinquency have been recorded and not released
 215 during the preceding 3 years or the property owner's period of
 216 ownership, whichever is less.

217 4. The property owner is current on all mortgage debt on
 218 the property.

219 (10) To constitute an improvement to the building or
 220 facility, a qualifying improvement ~~must be~~ shall be affixed to a
 221 building or facility that is part of the property ~~and shall~~
 222 constitute an improvement to the building or facility or a
 223 fixture attached to the building or facility. A financing
 224 agreement may be executed for qualifying improvements in the
 225 construction of a commercial property before a certificate of

226 occupancy or similar evidence of substantial completion of new
227 construction or improvement is issued. Progress payments, or
228 payments made before completion, are allowed for commercial
229 properties, provided that the property owner subsequently
230 provides, upon request for a final progress payment
231 disbursement, written verification to the local government
232 confirming that the qualifying improvements are completed and
233 operating as intended. An agreement between a local government
234 and a qualifying residential property owner may not cover wind-
235 resistant ~~wind-resistance~~ improvements in buildings or
236 facilities under new construction or construction for which a
237 certificate of occupancy or similar evidence of substantial
238 completion of new construction or improvement has not been
239 issued.

240 (12) (a) Without the consent of the holders or loan
241 servicers of any mortgage encumbering or otherwise secured by
242 the residential property, the total amount of any non-ad valorem
243 assessment for a property under this section may not exceed 20
244 percent of the just value of the property as determined by the
245 county property appraiser.

246 (b) Notwithstanding paragraph (a), a non-ad valorem
247 assessment for a qualifying improvement defined in sub-
248 subparagraph (2)(e)1.a. or sub-subparagraph (2)(e)1.b. on a
249 residential property ~~subparagraph (2)(b)1. or subparagraph~~
250 ~~(2)(b)2.~~ that is supported by an energy audit is not subject to

251 the limits in this subsection if the audit demonstrates that the
 252 annual energy savings from the qualified improvement equals or
 253 exceeds the annual repayment amount of the non-ad valorem
 254 assessment.

255 (c) Before entering into a financing agreement with a
 256 commercial property owner, the local government must be in
 257 receipt of the written consent of the current holders or loan
 258 servicers of any mortgage that encumbers or is otherwise secured
 259 by the commercial property or that will otherwise be secured by
 260 the property at the time the financing agreement is executed by
 261 the local government.

262 (13) At least 30 days before entering into a financing
 263 agreement, the property owner shall provide to the holders or
 264 loan servicers of any existing mortgages that encumber the
 265 property, encumbering or that will otherwise be otherwise
 266 secured by the property at the time the financing agreement is
 267 executed by the local government, a notice of the owner's intent
 268 to enter into a financing agreement together with the maximum
 269 principal amount to be financed and the maximum annual
 270 assessment necessary to repay that amount. A verified copy or
 271 other proof of such notice must ~~shall~~ be provided to the local
 272 government. A provision in any agreement between a mortgagee or
 273 other lienholder and a property owner, or otherwise now or
 274 hereafter binding upon a property owner, which allows for
 275 acceleration of payment of the mortgage, note, or lien or other

276 unilateral modification solely as a result of entering into a
 277 financing agreement as provided for in this section is not
 278 enforceable. This subsection does not limit the authority of the
 279 holder or loan servicer to increase the required monthly escrow
 280 by an amount necessary to ~~annually~~ pay the annual ~~qualifying~~
 281 ~~improvement~~ assessment.

282 (14) At or before the time a purchaser executes a contract
 283 for the sale and purchase of any property for which a non-ad
 284 valorem assessment has been levied under this section and has an
 285 unpaid balance due, the seller shall give the prospective
 286 purchaser a written disclosure statement in either of the
 287 following forms ~~form~~, which must ~~shall~~ be set forth in the
 288 contract or in a separate writing.

289 (a) For a residential property:

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 291 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
 292 RENEWABLE ENERGY, OR WIND RESISTANCE.—The property
 293 being purchased is located within the jurisdiction of
 294 a local government that has placed an assessment on
 295 the property pursuant to s. 163.08, Florida Statutes.
 296 The assessment is for a qualifying improvement to the
 297 property relating to energy efficiency, renewable
 298 energy, or wind resistance, and is not based on the
 299 value of property. You are encouraged to contact the
 300 county property appraiser's office to learn more about

301 this and other assessments that may be provided by
 302 law.

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 304 (b) For a commercial property:

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 306 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
 307 RENEWABLE ENERGY, OR RESILIENCY.—The property being
 308 purchased is located within the jurisdiction of a
 309 local government that has placed an assessment on the
 310 property pursuant to s. 163.08, Florida Statutes. The
 311 assessment is for a qualifying improvement to the
 312 property relating to energy efficiency, renewable
 313 energy, or resiliency, and is not based on the value
 314 of property. You are encouraged to contact the county
 315 property appraiser's office to learn more about this
 316 and other assessments that may be provided by law.

317
 318 (17) This section is prospective only and does not affect
 319 or amend any existing non-ad valorem assessment or any existing
 320 interlocal agreement between local governments.

321 Section 2. This act shall take effect July 1, 2023.