

By Senator Gruters

22-00452A-23

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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; requiring a delinquent
11 assessment with a nongovernmental lessee to be
12 enforced in the manner provided by law; specifying
13 requirements of the financing agreement for government
14 commercial property; specifying the determinations a
15 local government must make before entering into a
16 financing agreement for commercial and residential
17 properties; authorizing a financing agreement to be
18 executed for commercial property under certain
19 circumstances; restricting what improvements may be
20 covered in certain agreements between local
21 governments and residential property owners; limiting
22 the amount of non-ad valorem assessment for certain
23 residential property; providing an exception relating
24 to non-ad valorem assessment for residential property
25 that is supported by an energy audit; specifying
26 requirements for local government before entering into
27 a financing agreement; revising notice requirements
28 regarding an owner's intent to enter into a financing
29 agreement; revising the seller's disclosure statement

22-00452A-23

2023810__

30 for certain properties offered for sale; providing
31 construction; providing an effective date.
32

33 Be It Enacted by the Legislature of the State of Florida:
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35 Section 1. Paragraph (b) of subsection (1) and subsections
36 (2), (4), (8), (9), (10), (12), (13), and (14) of section
37 163.08, Florida Statutes, are amended, and subsection (17) is
38 added to that section, to read:

39 163.08 Supplemental authority for improvements to real
40 property.—

41 (1)

42 (b) The Legislature finds that all energy-consuming-
43 improved properties that are not using energy conservation
44 strategies contribute to the burden affecting all improved
45 property resulting from fossil fuel energy production. Improved
46 property ~~that has been~~ retrofitted with energy-related
47 qualifying improvements receives the special benefit of
48 alleviating the property's burden from energy consumption. All
49 improved properties not protected from wind damage by wind
50 resistance qualifying improvements contribute to the burden
51 affecting all improved property resulting from potential wind
52 damage. Improved property ~~that has been~~ retrofitted with
53 resiliency ~~wind resistance~~ qualifying improvements receives the
54 special benefit of reducing the property's burden from potential
55 wind damage. Further, the installation and operation of
56 qualifying improvements not only benefit the affected properties
57 for which the improvements are made, but also assist in
58 fulfilling the goals of the state's energy and hurricane

22-00452A-23

2023810__

59 mitigation policies. In order to make qualifying improvements
60 more affordable and assist property owners who wish to undertake
61 such improvements, the Legislature finds that there is a
62 compelling state interest in enabling property owners to
63 voluntarily finance such improvements with local government
64 assistance.

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

66 (a) "Commercial property" means real property not defined
67 as residential property which will be or has been improved by a
68 qualifying improvement, including, but not limited to, the
69 following:

70 1. A multifamily residential property composed of five or
71 more dwelling units;

72 2. A commercial real property;

73 3. An industrial building or property;

74 4. An agricultural property;

75 5. A nonprofit-owned property;

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

78 7. A government commercial property.

79 (b) "Government commercial property" means real property
80 owned by a local government and leased to a nongovernmental
81 lessee where the usage by the lessee meets the definition of
82 commercial property.

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

86 (d) "Nongovernmental lessee" means a person or an entity
87 other than a local government which leases government commercial

22-00452A-23

2023810__

88 property.

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

90 1. Energy conservation and efficiency improvement, which is
91 a measure to reduce consumption through conservation or a more
92 efficient use of electricity, natural gas, propane, or other
93 forms of energy on the property, including, but not limited to,
94 air sealing; installation of insulation; installation of energy-
95 efficient heating, cooling, or ventilation systems; building
96 modifications to increase the use of daylight; replacement of
97 windows; installation of energy controls or energy recovery
98 systems; installation of electric vehicle charging equipment;
99 ~~and~~ installation of efficient lighting equipment; or any other
100 improvements necessary to achieve a sustainable building rating
101 or compliance with a national model green building code.

102 2. Renewable energy improvement, which is the installation
103 of any system in which the electrical, mechanical, or thermal
104 energy is produced from a method that uses one or more of the
105 following fuels or energy sources: hydrogen, solar energy,
106 geothermal energy, bioenergy, and wind energy.

107 3. Resiliency ~~Wind resistance~~ improvement, which includes,
108 but is not limited to:

- 109 a. Improving the strength of the roof deck attachment;
110 b. Creating a secondary water barrier, including sea walls,
111 to prevent water intrusion;
112 c. Installing wind-resistant shingles;
113 d. Installing gable-end bracing;
114 e. Reinforcing roof-to-wall connections;
115 f. Installing storm shutters; ~~or~~
116 g. Installing opening protections;

22-00452A-23

2023810__

117 h. Creating or improving stormwater, flood, and wastewater
118 management; or

119 i. Making any other improvements necessary to achieve a
120 sustainable building rating or compliance with a national model
121 resiliency standard.

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

125 (4) Subject to local government ordinance or resolution, a
126 residential or commercial property owner may apply to the local
127 government for funding to finance a qualifying improvement and
128 enter into a financing agreement with the local government.
129 Costs incurred by the local government for such purpose may be
130 collected as a non-ad valorem assessment. A non-ad valorem
131 assessment must ~~shall~~ be collected pursuant to s. 197.3632 and,
132 notwithstanding s. 197.3632(8)(a), is ~~shall~~ not ~~be~~ subject to
133 discount for early payment. However, the notice and adoption
134 requirements of s. 197.3632(4) do not apply if this section is
135 used and complied with, and the intent resolution, publication
136 of notice, and mailed notices to the property appraiser, tax
137 collector, and Department of Revenue required by s.
138 197.3632(3)(a) may be provided on or before August 15 in
139 conjunction with any non-ad valorem assessment authorized by
140 this section, if the property appraiser, tax collector, and
141 local government agree. A non-ad valorem assessment on a
142 commercial property securing financing for a qualifying
143 improvement, notwithstanding ss. 192.091(2)(b) and
144 197.3632(8)(c), is subject to a maximum annual fee of 1 percent
145 of the annual non-ad valorem assessment collected or \$5,000,

22-00452A-23

2023810__

146 whichever is less. Notwithstanding this subsection, a delinquent
147 assessment pursuant to a financing agreement with a
148 nongovernmental lessee must be enforced in the manner provided
149 by law for taxes and assessments on property owned by
150 nongovernmental lessees of government commercial property.

151 (8) A local government may enter into a financing agreement
152 to finance or refinance a qualifying improvement only with the
153 record owner of the affected property. For government commercial
154 property, the financing agreement must be executed by the
155 nongovernmental lessee with the written consent of the
156 governmental lessor. Evidence of such consent must be provided
157 to the local government. The financing agreement with a
158 nongovernmental lessee must provide that the nongovernmental
159 lessee is the only party obligated to pay the assessment. Any
160 financing agreement entered into pursuant to this section or a
161 summary memorandum of such agreement must ~~shall~~ be recorded in
162 the public records of the county within which the property is
163 located by the sponsoring unit of local government within 5 days
164 after execution of the agreement. The recorded agreement
165 provides ~~shall provide~~ constructive notice that the assessment
166 to be levied on the property constitutes a lien of equal dignity
167 to county taxes and assessments from the date of recordation.

168 (9) (a) Before entering into a financing agreement for a
169 commercial property, the local government shall reasonably
170 determine that all of the following conditions have been met:

171 1. that All property taxes and any other assessments levied
172 on the same bill as property taxes are current. ~~paid and have~~
173 ~~not been delinquent for the preceding 3 years or the property~~
174 ~~owner's period of ownership, whichever is less;~~

22-00452A-23

2023810__

175 2. ~~that~~ There are no involuntary liens greater than
176 \$10,000, including, but not limited to, construction liens on
177 the property.

178 3. ~~that~~ No notices of default or other evidence of
179 property-based debt delinquency have been recorded and not
180 released during the preceding 3 years or the property owner's
181 period of ownership, whichever is less.

182 4. ~~and that~~ The property owner is current on all mortgage
183 debt on the property.

184 (b) Before entering into a financing agreement for a
185 residential property, the local government shall reasonably
186 determine that all of the following conditions have been met:

187 1. All property taxes and any other assessments levied on
188 the same bill as property taxes are paid and have not been
189 delinquent for the preceding 3 years or the property owner's
190 period of ownership, whichever is less.

191 2. There are no involuntary liens, including, but not
192 limited to, construction liens on the property.

193 3. No notices of default or other evidence of property-
194 based debt delinquency have been recorded during the preceding 3
195 years or the property owner's period of ownership, whichever is
196 less.

197 4. The property owner is current on all mortgage debt on
198 the property.

199 (10) To constitute an improvement to the building or
200 facility, a qualifying improvement must be ~~shall be~~ affixed to a
201 building or facility that is part of the property and ~~shall~~
202 constitute an improvement to the building or facility or a
203 fixture attached to the building or facility. A financing

22-00452A-23

2023810__

204 agreement may be executed for qualifying improvements in the
205 construction of a commercial property before a certificate of
206 occupancy or similar evidence of substantial completion of new
207 construction or improvement is issued. Progress payments, or
208 payments made before completion, are allowed for commercial
209 properties, provided that the property owner subsequently
210 provides, upon request for a final progress payment
211 disbursement, written verification to the local government
212 confirming that the qualifying improvements are completed and
213 operating as intended. An agreement between a local government
214 and a qualifying residential property owner may not cover wind-
215 resistant ~~wind-resistance~~ improvements in buildings or
216 facilities under new construction or construction for which a
217 certificate of occupancy or similar evidence of substantial
218 completion of new construction or improvement has not been
219 issued.

220 (12) (a) Without the consent of the holders or loan
221 servicers of any mortgage encumbering or otherwise secured by
222 the residential property, the total amount of any non-ad valorem
223 assessment for a property under this section may not exceed 20
224 percent of the just value of the property as determined by the
225 county property appraiser.

226 (b) Notwithstanding paragraph (a), a non-ad valorem
227 assessment for a qualifying improvement defined in subparagraph
228 (2) (b)1. or subparagraph (2) (b)2. on a residential property that
229 is supported by an energy audit is not subject to the limits in
230 this subsection if the audit demonstrates that the annual energy
231 savings from the qualified improvement equals or exceeds the
232 annual repayment amount of the non-ad valorem assessment.

22-00452A-23

2023810__

233 (c) Before entering into a financing agreement with a
234 commercial property owner, the local government must be in
235 receipt of the written consent of the current holders or loan
236 servicers of any mortgage that encumbers or is otherwise secured
237 by the commercial property or that will otherwise be secured by
238 the property at the time the financing agreement is executed by
239 the local government.

240 (13) At least 30 days before entering into a financing
241 agreement, the property owner shall provide to the holders or
242 loan servicers of any existing mortgages that encumber the
243 property, encumbering or that will otherwise be otherwise
244 secured by the property at the time the financing agreement is
245 executed by the local government, a notice of the owner's intent
246 to enter into a financing agreement together with the maximum
247 principal amount to be financed and the maximum annual
248 assessment necessary to repay that amount. A verified copy or
249 other proof of such notice must ~~shall~~ be provided to the local
250 government. A provision in any agreement between a mortgagee or
251 other lienholder and a property owner, or otherwise now or
252 hereafter binding upon a property owner, which allows for
253 acceleration of payment of the mortgage, note, or lien or other
254 unilateral modification solely as a result of entering into a
255 financing agreement as provided for in this section is not
256 enforceable. This subsection does not limit the authority of the
257 holder or loan servicer to increase the required monthly escrow
258 by an amount necessary to ~~annually~~ pay the annual ~~qualifying~~
259 ~~improvement~~ assessment.

260 (14) At or before the time a purchaser executes a contract
261 for the sale and purchase of any property for which a non-ad

22-00452A-23

2023810__

262 valorem assessment has been levied under this section and has an
263 unpaid balance due, the seller shall give the prospective
264 purchaser a written disclosure statement in ~~the~~ either of the
265 following forms form, which must shall be set forth in the
266 contract or in a separate writing.

267 (a) For a commercial property:

268
269 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
270 RENEWABLE ENERGY, OR RESILIENCY WIND-RESISTANCE.—The
271 property being purchased is located within the
272 jurisdiction of a local government that has placed an
273 assessment on the property pursuant to s. 163.08,
274 Florida Statutes. The assessment is for a qualifying
275 improvement to the property relating to energy
276 efficiency, renewable energy, or resiliency wind
277 ~~resistance~~, and is not based on the value of property.
278 You are encouraged to contact the county property
279 appraiser's office to learn more about this and other
280 assessments that may be provided by law.

281

282 (b) For a residential property:

283

284 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
285 RENEWABLE ENERGY, OR RESILIENCY.—The property being
286 purchased is located within the jurisdiction of a
287 local government that has placed an assessment on the
288 property pursuant to s. 163.08, Florida Statutes. The
289 assessment is for a qualifying improvement to the
290 property relating to energy efficiency, renewable

22-00452A-23

2023810__

291 energy, or resiliency, and is not based on the value
292 of property. You are encouraged to contact the county
293 property appraiser's office to learn more about this
294 and other assessments that may be provided by law.

295
296 (17) This section is prospective only and does not affect
297 or amend any existing non-ad valorem assessment or any existing
298 interlocal agreement between local governments.

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