

BILL

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to energy and wind damage resistance  
 3 improvements to real property; creating s. 163.08, F.S.,  
 4 providing for supplemental authority to local governments  
 5 regarding improvements to real property; providing  
 6 legislative purpose and intent; defining "local  
 7 government" and "qualifying improvement"; authorizing a  
 8 local government to levy a non-ad valorem assessment to  
 9 fund a qualifying improvement; authorizing a property  
 10 owner to enter into a financing agreement with a local  
 11 government to finance a qualifying improvement;  
 12 authorizing a local government to collect for such purpose  
 13 through a non-ad valorem assessment, pursuant to s.  
 14 197.3632, a municipal or county lien, or through any other  
 15 lawful method; providing exceptions; providing for  
 16 discontinuance of utility service in the event of  
 17 nonpayment if the financing agreement provides for  
 18 repayment through a utility bill; authorizing a local  
 19 government to partner with one or more local governments  
 20 for the purpose of providing and financing qualifying  
 21 improvements; authorizing, on behalf of and at the  
 22 discretion of the local government, a qualifying  
 23 improvement program to be administered by a for-profit  
 24 entity or a not-for-profit organization; authorizing a  
 25 local government to incur debt payable from revenues  
 26 received from the improved property; directing a local  
 27 government to determine past payment delinquencies and  
 28 involuntary liens on the property; requiring that a

BILL

ORIGINAL

YEAR

29 |       qualifying improvement be affixed to an existing building  
 30 |       or facility on the property and be performed by a properly  
 31 |       certified or registered contractor, pursuant to Parts I  
 32 |       and II of ch. 489, F.S.; providing for a limit of 20  
 33 |       percent of the just value of the property for a non-ad  
 34 |       valorem assessment or municipal or county lean; providing  
 35 |       for exceptions; prohibiting acceleration of a mortgage  
 36 |       under certain circumstances; providing for statutory  
 37 |       construction regarding a local government's authority;  
 38 |       providing an effective date.

39 |

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

41 |

42 |       Section 1. Section 163.08, Florida Statutes, is created to  
 43 |       read:

44 |       163.08 Supplemental authority regarding improvements to  
 45 |       real property.--

46 |       (1) Statement of legislative purpose and intent.--

47 |       (a) In chapter 2008-227, Laws of Florida, the Legislature  
 48 |       amended the energy goal of the State Comprehensive Plan to  
 49 |       provide, in part, that Florida shall reduce its energy  
 50 |       requirements through enhanced conservation and efficiency  
 51 |       measures in all end-use sectors and shall reduce atmospheric  
 52 |       carbon dioxide by promoting an increased use of renewable energy  
 53 |       resources. The Act also declared it the public policy of the  
 54 |       State of Florida to play a leading role in developing and  
 55 |       instituting energy management programs aimed at promoting energy  
 56 |       conservation, energy security, and reduction of greenhouse

BILL

ORIGINAL

YEAR

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

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

BILL

ORIGINAL

YEAR

85 the improvements are made, but also assist in fulfilling the  
 86 goals of the state's energy and hurricane mitigation policies.  
 87 To make qualifying improvements more affordable and assist  
 88 property owners who wish to undertake them, there is a  
 89 compelling state interest in enabling property owners, on a  
 90 voluntary basis, to finance such improvements with local  
 91 government assistance.

92 (c) The Legislature hereby determines that the actions  
 93 authorized under this act, including the financing therein of  
 94 qualifying improvements through the execution of financing  
 95 agreements and the related imposition of voluntary assessments  
 96 or charges, are reasonable and necessary to serve and achieve a  
 97 compelling state interest, and are necessary for the prosperity  
 98 and welfare of the state and its property owners and  
 99 inhabitants.

100 (2) For purposes of this section:

101 (a) "Local government" means a county, a municipality, or  
 102 a special district.

103 (b) "Qualifying improvement" includes any of the  
 104 following:

105 1. "Energy conservation and efficiency improvement" means  
 106 a measure to reduce consumption, through conservation or more  
 107 efficient use, of electricity, natural gas, propane, or other  
 108 forms of energy on the property, including but not limited to  
 109 air sealing, installation of insulation, installation of energy  
 110 efficient heating, cooling, or ventilation systems, building  
 111 modifications to increase the use of daylighting, replacement of  
 112 windows, installation of energy controls or energy recovery

BILL

ORIGINAL

YEAR

113 systems, and installation of efficient lighting equipment,  
 114 provided that, to be covered by an agreement with a property  
 115 owner and financed under this act, such improvement must be  
 116 affixed to a building or facility that is part of the property.

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

122 3. "Wind resistance improvement" 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 a non-ad valorem  
 133 assessment to fund a qualifying improvement.

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  
 138 local government for such purpose may be collected as a non-ad  
 139 valorem assessment, a municipal or county lien, or may be  
 140 collected pursuant to any other lawful method.

BILL

ORIGINAL

YEAR

141 (a) A non-ad valorem assessment shall be collected  
 142 pursuant s. 197.3632; provided, however, that the notice and  
 143 adoption requirements of s. 197.3632(4) shall not apply in the  
 144 instance where the provisions of this section are used and  
 145 complied with, and the initial resolution, publication of  
 146 notice, and mailed notices to the property appraiser, tax  
 147 collector, and Department of Revenue required by s.  
 148 197.3632(3) (a) may be provided on or before August 15 in  
 149 conjunction with any non-ad valorem assessment authorized by  
 150 this act, if the property appraiser, tax collector and local  
 151 government agree.

152 (b) In the event the financing agreement provides for  
 153 repayment through a surcharge on a utility or other municipal  
 154 service bill in the form of a municipal lien, the utility  
 155 provider may discontinue the delivery of all utility service in  
 156 the event of nonpayment of the surcharge; provided, however,  
 157 that the financing agreement must set forth the terms and costs  
 158 of such discontinuance, including the period of time after which  
 159 discontinuance will be imposed.

160 (5) Pursuant to this chapter or as otherwise provided by  
 161 law or pursuant to its home rule power, a local government may  
 162 partner with one or more local governments for the purpose of  
 163 providing and financing qualifying improvements.

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

167 (7) A local government may incur debt for the purpose of  
 168 providing such improvements, payable from revenues received from

BILL

ORIGINAL

YEAR

169 the improved property, or any other available revenue source as  
 170 authorized by law.

171 (8) A local government may enter into a financing  
 172 agreement only with the record owner of the affected property.

173 (9) Prior to entering into a financing agreement, the  
 174 local government shall reasonably determine that all property  
 175 taxes and any other assessments levied on the same bill as  
 176 property taxes are paid and have not been delinquent for the  
 177 past three (3) years or the property owner's period of  
 178 ownership, whichever is less; that there are no involuntary  
 179 liens such as construction liens on the property; that no  
 180 notices of default or other evidence of property-based debt  
 181 delinquency have been recorded during the past three (3) years  
 182 or the property owner's period of ownership, whichever is less;  
 183 and that the property owner is then current on all mortgage debt  
 184 on the property.

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

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

BILL

ORIGINAL

YEAR

197 489, Part I and Part II.  
 198 (12) Without the consent of the holders or loan servicers  
 199 of any mortgage encumbering or otherwise secured by the  
 200 property, the total amount of any non-ad valorem assessment or  
 201 municipal or county lien for a property under this act shall not  
 202 exceed 20 percent of the just value of the property as  
 203 determined by the county property appraiser.  
 204 (a) Notwithstanding the foregoing, a non-ad valorem  
 205 assessment or municipal or county lien for a qualifying  
 206 improvement defined in subsection (2)(b) 1. or 2. that is  
 207 supported by an energy audit shall not be subject to the limits  
 208 in this subsection, if the audit demonstrates the annual energy  
 209 savings from the qualified improvement equals or exceeds the  
 210 annual repayment amount of the non-ad valorem assessment or  
 211 municipal or county lien.  
 212 (b) A local government may adopt alternate parameters to  
 213 those specified in this subsection to conform to local needs and  
 214 conditions, following a public hearing and the finding of the  
 215 need for such changes due to the local needs and conditions.  
 216 (13) At least thirty (30) days prior to entering into a  
 217 financing agreement, the property owner shall provide to the  
 218 holders or loan servicers of any existing mortgages encumbering  
 219 or otherwise secured by the property notice of their intent to  
 220 enter into a financing agreement together with the maximum  
 221 principle amount to be financed and the maximum annual  
 222 assessment necessary to repay same. No provision in any  
 223 agreement between a mortgagee or other lienholder and a property  
 224 owner or otherwise now or hereafter binding upon a property



BILL

ORIGINAL

YEAR

225 owner, which allows for acceleration of payment of the mortgage,  
 226 note or lien or other unilateral modification solely as a result  
 227 of entering into a financing agreement as provided for in this  
 228 section, shall be or construed as enforceable. This subsection  
 229 shall not limit the authority of the holder or loan servicer to  
 230 increase the required monthly escrow by an amount necessary to  
 231 annually pay the qualifying improvement assessment.

232 (14) No provision in any agreement between a local  
 233 government and a public or private power or energy provider, or  
 234 other utility provider, shall be construed to or be enforceable  
 235 to limit or prohibit any local government from exercising its  
 236 authority under this section.

237 (15) This section shall be construed to be additional and  
 238 supplemental to county and municipal home rule authority and not  
 239 in derogation thereof or a limitation thereon.

240 Section 2. This act shall take effect July 1, 2010.