HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 927 Improvements to Real Property
SPONSOR(S): Ways & Means Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee		Berg	Aldridge

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create qualifying improvement programs, commonly referred to as Property Assessed Clean Energy (PACE) programs, to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. Qualifying improvements include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments may offer this program to residential and/or commercial property owners and may administer the program directly or through a third-party.

The bill makes several changes to Florida law governing qualifying improvement programs:

- Modifies eligible "qualifying improvements"
    - For residential properties: **Adds** certain wastewater improvements, flood and water damage resiliency improvements, and permanent generators; **Removes** some energy conservation and efficiency improvements.
    - For commercial properties: **Adds** wastewater improvements, flood and water damage resiliency improvements, improvements to achieve a sustainable building rating or compliance with a national model resiliency standard, improvements to achieve wind or flood insurance rate reductions, and water conservation improvements.
- Requires the holder or servicer of a mortgage that encumbers an applicant's commercial property to provide consent for the applicant to finance any qualifying improvement through the program.
- Provides additional new terms and requirements for residential and commercial properties, including:
    - Written and oral disclosure requirements.
    - Maximum terms for financing agreements based on the useful life of financed improvements.
    - A rescission period of 3 business days for financing agreements on residential property improvements.
    - Terms for certain change orders necessary for completion of qualifying improvements.
- Establishes requirements relating to program contractors and third-party administrators, including annual performance reviews; regulates program marketing and information sharing and prohibits kickbacks from program administrators to contractors; specifies terms under which financing agreements are unenforceable, and requires an annual report from each local government that has authorized a qualifying improvement program.
- Requires the Auditor General to conduct an operational audit of residential and commercial programs every 3 years.

The bill does not have a fiscal impact on state or local government. The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) laws enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills. PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[1]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[2] The law[3] provides supplemental authority to local governments[4] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[5] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[6]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[7] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[8] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[9] so if the homeowner defaults on their mortgage or goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program

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[1] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. *See* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited Jan, 27, 2024).
[2] Ch. 2010-139, Laws of Fla.
[3] S. 163.08, F.S.
[4] Section 163.08(2)(a), F.S., defines the term "local government" to mean 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) (the Florida Interlocal Cooperation Act)."
[5] S. 163.08(4), F.S.
[6] S. 163.08(2)(b), F.S.
[7] S. 163.08(13), F.S.
[8] S. 163.08(15), F.S.
[9] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[10] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[11]

Before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments on the property are paid and have not been delinquent for the preceding 3 years (or the property owner's period of ownership, if less than 3 years);
- There are no involuntary liens on the property, including, but not limited to, construction liens;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years (or the property owner's period of ownership, if less than 3 years); and
- The property owner is current on all mortgage debt on the property.[12]

The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[13] Consideration of the property owner's ability to repay the assessment is not required.

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers. Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[14] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[15]

For example, Broward County authorizes the following PACE providers:[16]

- Counterpointe Energy Solutions administers a commercial PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program for the Florida PACE Funding Agency District.
- Greenworks Lending administers a commercial PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program for the Florida Resiliency and Energy District.

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[10] S. 163.01(7), F.S.
[11] Ch. 2012-117, Laws of Fla.
[12] S. 163.08(9), F.S.
[13] S. 163.08(12)(a), F.S.
[14] *See, e.g.,* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf (last visited Jan. 27, 2024).
[15] *See, e.g.,* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Jan. 27, 2024).
[16] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf (last visited Jan. 27, 2024).

- Home Run Financing administers a residential PACE Program for the Florida PACE Funding Agency District.
- Rahill administers a commercial PACE program for the Florida Resiliency and Energy District.
- Renew Financial administers PACE programs under the “RenewPACE” Program (residential and commercial) for the Florida Green Finance Authority.
- Structured Finance Associates administers a commercial PACE program for the Florida Resiliency and Energy District.
- Twain Financial Partners administers a commercial PACE program for the Florida Renewable Energy District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

PACE financing interest rates vary but are typically higher than traditional financing.[17] Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.[18]

<u>Federal Housing Finance Agency and Super-Priority Liens</u>

In 2010, and again in 2014,[19] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a PACE assessment due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[20]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[21]

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[17] The Balance, *How PACE Loans Work,* https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071 (last visited Jan. 27, 2024).

[18] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf (last visited Jan. 27, 2024).

[19] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited Jan. 27, 2024). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)(“FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac’s policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it”) http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Jan. 27, 2024).

[20] “Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner’s acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender.” Prentiss Cox, *Keeping PACE? The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited Jan. 27, 2024).

[21] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 20.

This restriction has two potential implications for borrowers. First, a homeowner whose property is encumbered with a PACE assessment may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[22]

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[23]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[24] For example, in 2013, California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[25]

Consumer Protection

Consumer issues have surrounded PACE programs from their inception.[26] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[27] An administrator of residential PACE programs in California and Florida recently settled with the Federal Trade Commission and California to address complaints that the administrator recruited and authorized contractors, without adequate training or oversight, to sell its financing, leading to many consumers being deceived during the sales process and being unfairly subjected to liens on their homes without their express, informed consent.[28]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[29]

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[22] *Id.*.
[23] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[24] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[25] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited April 5, 2023).
[26] "PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure." National Consumer Law Center, *Advocates Applaud CFPB's Intention* to *Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited Jan. 27, 2024).
[27] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[28] Federal Trade Commission, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent,* https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens (last visited Jan. 27, 2024).
[29] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection,

The United States Department of Energy maintains “best practice guidelines” for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;
- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[30]

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[31]

Florida PACE Funding Agency

The Florida PACE Funding Agency (FPFA) is one of several separate legal entities formed under the Florida Interlocal Cooperation Act to impose PACE assessments. It was formed by an interlocal agreement between Flagler County and City of Kissimmee. FPFA markets PACE financing statewide[32] and has sued county tax collectors to force collection of PACE assessments in jurisdictions that have not agreed to be a part of FPFA or even to offer PACE programs.[33] This has led to a pending lawsuit that includes nearly half of the counties in the state over local government rights[34] and creates uncertainty for property owners and contractors.

Wastewater Treatment Improvements

The Florida Department of Environmental Protection provides “Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as septic systems, are currently used for wastewater disposal by approximately 30% of Florida’s population. With an estimated 2.6 million systems in operation, Florida represents 12% of the United States’ septic systems. Proper design, construction, and maintenance of systems are important to help protect Florida’s ground water, which provides 90 percent of Florida’s drinking water.”[35]

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.[36]

Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).

[30] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited Jan. 27, 2024).

[31] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited Jan. 27, 2024).

[32] Florida PACE Funding Agency, https://floridapace.gov/ (last visited Jan. 27, 2024).

[33] *See* C.T. Bowen, *PACE sues to restart Hillsborough County loans*, Tampa Bay Times, Aug. 23, 2023; Alex Harris, *Florida counties say PACE home loan program needs more consumer protections*, Miami Herald, Dec. 20, 2023; Jeff Burlew, *Leon County declares Florida PACE Funding Agency a 'public danger' over home improvement loans*, Tallahassee Democrat, Jul. 19, 2023.

[34] Harris, *supra* note 34.

[35] Florida Department of Environmental Protection, *Onsite Sewage Program*, https://floridadep.gov/water/onsite-sewage (last visited Jan. 27, 2024).

[36] Benita Goldstein, *Failing septic tanks damaging state’s environment; will cost billions of dollars to replace*, South Florida Sun Sentinel, Apr. 22, 2019.

These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of $15,000 to $20,000.[37]

Effect of the Bill

The bill makes several changes to Florida's PACE law by modifying the types of improvements eligible for financing as qualifying improvements, establishing expanded underwriting requirements for financing agreements, requiring specific disclosures to applicants, and providing terms for the conduct of contractors and third-party administrators. The bill splits the current statute into multiple sequential statutes to address the following.

Definitions – Section 163.08, F.S.

The bill defines the following terms related to programs used in Florida to finance qualifying improvements:

- *Program administrator* means a county, a municipality, a dependent special district as defined in s. 189.012, F.S., or a separate legal entity created pursuant to s. 163.01(7), F.S., which directly operates a program for financing qualifying improvements and is authorized pursuant to new ss. 163.081 and 163.082, F.S., created by the bill.
- *Residential property* means real property zoned as residential or multifamily residential and composed of four or fewer dwelling units.
- *Commercial property* means real property other than residential property, including, but not limited to, a property zoned multifamily residential which is composed of five or more dwelling units; and real property used for commercial, industrial, or agricultural purposes.
- *Property owner* means the owner or owners of record of real property. The term includes real property held in trust for the benefit of one or more individuals, in which case the individual or individuals may be considered as the property owner or owners, provided that the trustee provides written consent. The term does not include persons renting, using, living, or otherwise occupying real property.
- *Qualifying improvement contractor* means a licensed or registered contractor who has been registered to participate by a program administrator pursuant to terms established by the bill to install or otherwise perform work to make qualifying improvements on residential property financed pursuant to a program authorized under terms established by the bill.

Qualifying Improvement Programs - Residential Property – Section 163.081, F.S.

The bill provides that a program administrator may only offer a program for financing qualifying improvements to residential property within the jurisdiction of a county or municipality which has authorized by ordinance or resolution the administration of the program. A county or municipality can deauthorize a program through the method the program was originally authorized. Any financing agreements continue after the deauthorization of a program, unless the provisions of s. 163.086, F.S. (as created by this act), regarding unenforceable financing agreements, apply.

The bill clarifies that only the owner of record of a residential property may apply to an authorized program administrator to finance a qualifying improvement and that the program administrator may only enter into a financing agreement with the property owner.

Qualifying Improvements

[37] Terri Lowery, *Cities, Counties Need Plan to Switch Septic to Sewer,* Florida Today, May 24, 2016..

The bill amends the definition of “qualifying improvement” to modify the types of permanent improvements that may be financed under an authorized qualifying improvement program. For residential property, the bill provides that a qualifying improvement includes:

- Repairing, replacing, or improving a central sewerage system, converting an onsite sewage treatment and disposal system to a central sewerage system, or, if no central sewerage system is available, removing, repairing, replacing, or improving an onsite sewage treatment and disposal system to an advanced system or technology.
- Repairing, replacing, or improving a roof, including improvements that strengthen the roof deck attachment; create a secondary water barrier to prevent water intrusion; install wind-resistant shingles or gable-end bracing; or reinforce roof-to-wall connections.
- Providing flood and water damage mitigation and resiliency improvements, prioritizing repairs, replacement, or improvements that qualify for reductions in flood insurance premiums, including raising a structure above the base flood elevation to reduce flood damage; constructing a flood diversion apparatus, drainage gate, or seawall improvement; purchasing flood-damage-resistant building materials; or making electrical, mechanical, plumbing, or other system improvements that reduce flood damage.
- Replacing windows or doors, including garage doors, with energy-efficient, impact-resistant, wind-resistant, or hurricane windows or doors or installing storm shutters;
- Installing energy-efficient heating, cooling, or ventilation systems.
- Replacing or installing insulation.
- Replacing or installing energy-efficient water heaters.
- Installing and affixing a permanent generator.
- Providing a renewable energy improvement, including the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses solar, geothermal, bioenergy, wind or hydrogen.

The bill removes from current law the following types of improvements as qualifying improvements to residential property:

- Energy efficiency and conservation improvements not listed above, including air sealing; building modifications to increase the use of sunlight; and installation of energy controls or energy recovery devices, electric vehicle charging equipment, and efficient lighting equipment.

For residential properties, the bill prohibits financing agreements for qualifying improvements to buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

Underwriting Requirements

The bill provides that before entering into a financing agreement, the program administrator must review the residential property owner's public records derived from a commercially accepted source and the property owner's statements, records, and credit reports and make each of the following findings:

- There are sufficient resources to complete the project.
- The total amount of any non-ad valorem assessment under the program does not exceed 20 percent of the just value of the property as determined by the property appraiser, provided that the total amount may exceed this limitation upon written consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property.
- The combined mortgage-related debt and total amount of any non-ad valorem assessments under the program for the property does not exceed 97 percent of the just value of the property as determined by the property appraiser.
- The financing agreement does not utilize a negative amortization schedule, a balloon payment, or prepayment fees or fines other than nominal administrative costs. Capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

- All property taxes and any other assessments, including non-ad valorem assessments, levied on the same bill as the property taxes are current and have not been delinquent for the preceding 3 years, or the property owner's period of ownership, whichever is less.
- There are no outstanding fines or fees related to zoning or code enforcement violations issued by a county or municipality, unless the qualifying improvement will remedy the zoning or code violation.
- There are no involuntary liens, including, but not limited to, construction liens on the property.
- No notices of default or other evidence of property-based debt delinquency have been recorded and not released during the preceding 3 years or the property owner's period of ownership, whichever is less.
- The property owner is current on all mortgage debt on the residential property.
- The property owner has not been subject to a bankruptcy proceeding within the last 5 years unless it was discharged or dismissed more than 2 years before the date on which the property owner applied for financing.
- The residential property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- The term of the financing agreement does not exceed the weighted average useful life of the qualified improvements to which the greatest portion of funds disbursed under the assessment contract is attributable, not to exceed 20 years.[38]
- The total estimated annual payment amount for all financing agreements entered into under this section does not exceed 10% of the property owner's annual income. Income must be confirmed using reasonable evidence and not solely by the owner's statement.
- If the qualifying improvement is for the conversion of an onsite sewage treatment and disposal system to a central sewerage system, the property owner has utilized all available local government funding for such conversions and is unable to obtain financing for the improvement on more favorable terms through a local government program designed to support such conversions.

If the improvement is estimated to cost $10,000 or more, the program administrator must advise the property owner in writing that the best practice is to obtain estimates from at least two unaffiliated qualifying improvement contractors and must notify the owner in writing of the advertising and solicitation requirements of s. 163.085, F.S., as created by the bill.

Disclosures

The bill requires that, before approving a financing agreement, a program administrator must provide a written financing estimate and disclosure to the residential property owner. This disclosure must contain the following terms, each of which must be individually acknowledged in writing by the property owner:

- The estimated total amount to be financed, including the total and itemized cost of the qualifying improvement, program fees, and capitalized interest, if any.
- The estimated annual non-ad valorem assessment.
- The term of the financing agreement and the schedule for the non-ad valorem assessments.
- The interest charged and estimated annual percentage rate.
- A description of the qualifying improvement.
- The total estimated annual costs that will be required to be paid under the assessment contract, including program fees.
- The total estimated average monthly equivalent amount of funds that would need to be saved in order to pay the annual costs of the non-ad valorem assessment, including program fees.
- The estimated due date of the first payment that includes the non-ad valorem assessment.
- A disclosure that the financing agreement may be canceled within 3 business days after signing the financing agreement without any financial penalty for doing so.

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[38] The bill provides that the program administrator must determine the useful life of a qualifying improvement using established standards, including certification criteria from government agencies or nationally recognized standards and testing organizations

- A disclosure that the property owner may repay any remaining amount owed, at any time, without penalty or imposition of additional prepayment fees or fines other than nominal administrative costs.
- A disclosure that if the property owner sells or refinances the residential property, the property owner may be required by a mortgage lender to pay off the full amount owed under each financing agreement under this section.
- A disclosure that the assessment will be collected along with the property owner's property taxes, and will result in a lien on the property from the date the financing agreement is recorded.
- A disclosure that potential utility or insurance savings are not guaranteed, and will not reduce the assessment amount.
- A disclosure that failure to pay the assessment may result in penalties, fees, including attorney fees, court costs, and the issuance of a tax certificate that could result in the property owner losing the property and a judgment against the property owner, and may affect the property owner's credit rating.

Prior to the financing agreement being approved, the program administrator must conduct an oral, recorded telephone call with the property owner during which the program administrator must confirm each of these disclosures and the underwriting findings described above.

Other Terms

The bill provides that a residential property owner, without penalty, may cancel a financing agreement on a form established by the program administrator within 3 business days after signing the financing agreement.

The bill provides that the program administrator, before disbursing final funds to a qualifying improvement contractor for a qualifying improvement on residential property, must confirm that the applicable work or service has been completed or, as applicable, that the final permit for the qualifying improvement has been closed with all permit requirements satisfied or a certificate of occupancy or similar evidence of substantial completion of construction or improvement has been issued.

<u>Qualifying Improvement Programs - Commercial Property – Section 163.082, F.S.</u>

The bill provides that a program administrator may only offer a program for financing qualifying improvements to commercial property within the jurisdiction of a county or municipality which has authorized by ordinance or resolution the administration of the program. A county or municipality can deauthorize a program through the method the program was originally authorized. Any financing agreements continue after the deauthorization of a program, unless the provisions of s. 163.086, F.S. (as created by this act), regarding unenforceable financing agreements, apply.

The bill clarifies that only the owner of record of a commercial property may apply to an authorized program administrator to finance a qualifying improvement.

Qualifying Improvements

For commercial property, the bill amends the definition of "qualifying improvement" to include, in addition to the qualifying improvements authorized under current law:

- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.
- Waste system improvements, which consists of repairing, replacing, improving, or constructing a central sewerage system, converting an onsite sewage treatment and disposal system to a central sewerage system, or, if no central sewerage system is available, removing, repairing, replacing, or improving an onsite sewage treatment and disposal system to an advanced system or technology.
- Flood and water damage mitigation and resiliency improvements, prioritizing repairs, replacement, or improvements that qualify for reductions in flood insurance premiums, including

raising a structure above the base flood elevation to reduce flood damage; creating or improving stormwater and flood resiliency, including flood diversion apparatus, drainage gates, or shoreline improvements; purchasing flood-damage-resistant building materials; or making any other improvements necessary to achieve a sustainable building rating or compliance with a national model resiliency standard and any improvements to a structure to achieve wind or flood insurance rate reductions, including building elevation.
- Water conservation efficiency improvements, which are measures to reduce consumption through efficient use or conservation of water.

The bill removes from current law the installation of storm shutters or opening protections as qualifying improvements to commercial property.

Underwriting Requirements

The bill provides that before entering into a financing agreement, the program administrator must review public records derived from a commercially accepted source and the property owner's statements, records, and credit reports and make each of the following findings:
- There are sufficient resources to complete the project.
- The combined mortgage-related debt and total amount of any non-ad valorem assessments under the program for the commercial property does not exceed 97 percent of the just value of the property as determined by the property appraiser.
- All property taxes and any other assessments, including non-ad valorem assessments, levied on the same bill as the property taxes are current.
- There are no involuntary liens greater than $5,000, including, but not limited to, construction liens on the commercial property.
- No notices of default or other evidence of property-based debt delinquency have been recorded and not been released during the preceding 3 years or the property owner's period of ownership, whichever is less.
- The property owner is current on all mortgage debt on the commercial property.
- The term of the financing agreement does not exceed the weighted average useful life of the qualified improvements to which the greatest portion of funds disbursed under the assessment contract is attributable, not to exceed 30 years. The program administrator shall determine the useful life of a qualifying improvement using established standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.
- The property owner is not currently the subject of a bankruptcy proceeding.

The bill provides that all of these findings must be documented, including supporting evidence relied upon, and provided to the property owner before a financing agreement is approved and recorded.

Further, the bill requires that, prior to entering into a financing agreement with a commercial property owner, the local government must have the written consent of the current holders or servicers of any mortgage that encumbers or is otherwise secured by the property (or that will be secured by the property at the time the financing agreement is executed by the local government).

Disclosures

The bill provides that a financing agreement may not be approved unless the program administrator provides, either on a separate document or included with other disclosures or forms, a financing estimate and disclosure to the property owner which includes the following:
- The estimated total amount to be financed, including the total and itemized cost of the qualifying improvement, program fees, and capitalized interest, if any.
- The estimated annual non-ad valorem assessment.
- The term of the financing agreement and the schedule for the non-ad valorem assessments.
- The interest charged and estimated annual percentage rate.
- A description of the qualifying improvement.

- The total estimated annual costs that will be required to be paid under the assessment contract, including program fees.
- The estimated due date of the first payment that includes the non-ad valorem assessment.
- A disclosure of any prepayment penalties, fees, or fines as set forth in the financing agreement.

Other Terms

The bill requires the program administrator, upon disbursement of all financing and completion of installation of qualifying improvements financed, to file with the applicable county or municipality a certificate that the qualifying improvements have been installed and are in good working order.

Qualifying Improvement Programs – General Terms for All Properties

The bill prohibits financing agreements for qualifying improvements with a total cost (including program fees and interest) of less than $2,500.

The bill requires the program administrator, before entering into a financing agreement, to determine whether there are any current financing agreements on the property and if a property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded. The bill provides that this finding, along with other required findings, must be documented, including supporting evidence relied upon, and provided to the property owner before a financing agreement is approved and recorded.

The bill requires the program administrator to submit an approved financing agreement, or a summary memorandum of the agreement, for recording in the public records of the county within which the residential property is located within 10 business days after execution of the agreement (and the 3-day cancellation period, for residential projects). This extends the current law requirement that such agreements be submitted for recording within 5 business days.

The bill provides that a notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. Such lien is not enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the assessment financing agreement.

The bill reduces from 30 days to 5 days the requirement that before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.

The bill provides that when a change order or proposed change order on a project increases the cost or expands the scope of the original project by at least 20%, the program administrator must notify the property owner, confirm the change with the property owner, and provide an updated written disclosure form.

Qualifying Improvement Contractors – Section 163.083, F.S.

The bill requires a county or municipality to establish a process to register contractors for participation in a qualifying improvement program for residential properties. The county or municipality may approve such a process established by a program administrator. A contractor may only perform such work that the contractor is appropriately licensed, registered, and permitted to conduct.

The bill provides that contractors must, when applying to participate in a qualifying improvement program and while participating in the program:

- Hold all necessary licenses or registrations for the work to be performed which are in good standing. Good standing includes no outstanding complaints with the state or local government which issues such licenses or registrations.

- Comply with all applicable federal, state, and local laws and regulations, including obtaining and maintaining any other permits, licenses, or registrations required for engaging in business in the jurisdiction in which it operates and maintaining all state-required bond and insurance coverage.
- File with the program administrator a written statement in a form approved by the county or municipality that the contractor will comply with applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

The bill prohibits a program administrator or third-party administrator from registering as a qualifying improvement contractor.

The bill requires each program administrator to establish and maintain a process to monitor qualifying improvement contractors with regard to performance and compliance with program requirements and must conduct regular review of such contractors to confirm that each remains in good standing. The bill also requires each program administrator to establish and maintain procedures notice and imposition of penalties upon finding a violation, which penalties may include
- Probation with conditions for continued program participation.
- Suspension.
- Termination from program participation.

Each program administrator must also establish and maintain an “easily accessible” page on its website that provides information on the status of registered contractors.

Third-Party Administrators – Section 163.084, F.S.

The bill provides that a program administrator, in its discretion, may contract with one or more entities to administer a residential or commercial qualifying improvement program on behalf of the program administrator. A third-party administrator must be independent of the program administrator and have no conflicts of interest between its managers or owners and program administrator managers, owners, officials, or employees with oversight over the contract.

The bill prohibits a program administrator from contracting with a third-party administrator that, within the last three years, has been:
- Prohibited, after notice and a hearing, from serving as a third-party administrator for another program administrator for program or contract violations in this state or
- Found by a court of competent jurisdiction to have substantially violated state or federal laws related to the administration of a qualifying improvement program under relevant Florida laws or a similar program in another jurisdiction.

The bill clarifies that only the program administrator may levy or administer non-ad valorem assessments.

The bill provides that a contract with a third-party administrator must provide for the third-party to administer the program pursuant to the requirements of relevant Florida law and the ordinance or resolution adopted by the county or municipality authorizing the program. Further, the bill requires the program administrator to include in the contract the right to perform annual reviews of the third-party administrator to confirm compliance with relevant Florida law, the ordinance or resolution adopted by the county or municipality, and the contract.

If the program administrator finds that the third-party administrator has committed a violation of any of these terms, it must provide the third-party administrator with notice of the violation and may, as set forth in the adopted ordinance or resolution or the contract with the third-party administrator:
- Place the third-party administrator in a probationary status that places conditions for continued operations.
- Impose any fines or sanctions.
- Suspend the activity of the third-party administrator for a period of time.
- Terminate the agreement with the third-party administrator.

Further, the bill provides that a program administrator may terminate a contract with a third-party administrator, as set forth in the adopted ordinance or resolution or the contract with the third-party administrator, upon finding that:

- The third-party administrator has violated the contract.[39]
- The third-party administrator, or an officer, a director, a manager or a managing member, or a control person of the third-party administrator, has been found by a court of competent jurisdiction to have violated state or federal laws related to the administration a program authorized under relevant Florida law or a similar program in another jurisdiction within the last 5 years.
- Any officer, director, manager or managing member, or control person of the third-party administrator has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication has been withheld, a crime related to administration of a program authorized under relevant Florida law or a similar program in another jurisdiction within the last 10 years.
- An annual performance review reveals a substantial violation or a pattern of violations by the third-party administrator.

In the event of termination or suspension, the bill provides that any recorded financing agreements shall continue unless the provisions of new section 163.086, F.S., apply.

Advertising and Solicitation – Section 163.085, F.S.

The bill prohibits a program administrator, qualifying improvement contractor, or third-party administrator from doing the following when communicating with a property owner:

- Suggesting or implying that a non-ad valorem assessment authorized under a qualifying improvement program is a government assistance program.
- Suggesting or implying that qualifying improvements are free or provided at no cost, or that the financing related to a non-ad valorem assessment authorized under a qualifying improvement program is free or provided at no cost.
- Suggesting or implying that the financing of a qualifying improvement using a program authorized under Florida law does not require repayment of the financial obligation.
- Making any representation as to the tax deductibility of a non-ad valorem assessment.[40]

The bill prohibits these same entities from providing any direct cash payment or other thing of material value to a property owner which is explicitly conditioned upon entering into a financing agreement. The bill does allow a program administrator or third-party administrator to offer programs or promotions on a nondiscriminatory basis that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owner as cash consideration.

The bill also prohibits a program administrator or third-party administrator from:

- Providing a qualifying improvement contractor any information that discloses the amount of financing for which a property owner is eligible for qualifying improvements or the amount of equity in a residential property or commercial property.
- Providing any payment, fee, or kickback to a qualifying improvement contractor for referring property owners to the program administrator or third-party administrator. A program administrator or third-party administrator may provide information to a qualifying improvement contractor to facilitate the installation of an improvement for a property owner.
- Reimbursing a qualifying improvement contractor for its expenses in advertising and marketing campaigns and materials.

The bill prohibits a qualifying improvement contractor from:

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[39] The bill provides that the contract may set forth "substantial violations" that may result in contract termination and other violations that may provide for a period of time for correction before the contract may be terminated.

[40] The bill provides that a program administrator, qualifying improvement contractor, or third-party administrator may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

- Advertising the availability of financing agreements for, or soliciting program participation on behalf of, the program administrator unless the contractor is registered and is in good standing with the program administrator.
- Providing a different price for a qualifying improvement financed under a residential program than the price that the contractor would otherwise provide if the improvement was not being financed through a financing agreement.

Unenforceable Financing Agreements – Section 163.086, F.S.

The bill provides terms concerning the enforceability of financing agreements for qualifying improvements.

The bill provides that a financing agreement may not be enforced, and a recorded financing agreement may be removed from attachment to a residential property or commercial property and deemed null and void, if:

- The property owner applied for, accepted, and canceled a financing agreement within the 3-business-day period provided in the bill.
- A person other than the property owner obtained the recorded financing agreement.
- The program administrator, third-party administrator, or qualifying improvement contractor approved or obtained funding through fraudulent means and in violation of relevant Florida law.

The bill provides that if a qualifying improvement contractor has initiated work on property under a contract deemed unenforceable under this section, the qualifying improvement contractor:

- May not receive compensation for that work under the financing agreement;
- Must restore the property to its original condition at no cost to the property owner; and
- Must immediately return any funds, property, and other consideration given by the property owner. If the property owner provided any property and the qualifying improvement contractor does not or cannot return it, the qualifying improvement contractor must immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

If a qualifying improvement contractor has delivered chattel or fixtures to a residential property or commercial property pursuant to a contract deemed unenforceable under this section, the bill provides that the contractor has 90 days after the date on which the contract was executed to retrieve the chattel or fixtures, provided that:

- The qualifying improvement contractor has not received compensation and has restored the property to its original condition at no cost to the property owner; and
- The chattel and fixtures can be removed at the qualifying improvement contractor's expense without damaging the property.

If the contractor fails to comply with this requirement, the property owner may retain any chattel or fixtures provided pursuant to a contract deemed unenforceable.

The bill provides that a contract that is otherwise unenforceable under these the terms stated in the bill remains enforceable if the property owner waives his or her right to cancel the contract or cancels the financing agreement but allows the qualifying improvement contractor to proceed with the installation of the qualifying improvement.

The bill provides that a recorded financing agreement may not be removed from attachment to a residential property or commercial property if the property owner fraudulently obtained funding through an authorized qualifying improvement program.

Annual Report – Section 163.087, F.S.

The bill requires each program administrator that has authorized a qualifying improvement program for residential or commercial property to post on its website an annual report within 45 days after the end of its fiscal year. Each annual report must include the following information for the previous year:

- The number and types of qualifying improvements funded.

- The aggregate, average, and median dollar amounts of annual non-ad valorem assessments and the total number of non-ad valorem assessments collected under financing agreements.
- The total number of defaulted non-ad valorem assessments, including the total defaulted amount, the number and dates of missed payments, and the total number of parcels in default and the length of time in default.
- A summary of all reported complaints received by the program administrator related to the program, including the names of the third-party administrator, if applicable, and qualifying improvement contractors and the resolution of each complaint.

The bill requires the Auditor General to conduct an operational audit of each authorized program, including any third-party administrators, for compliance with the provisions of relevant Florida law and any adopted ordinance at least once every 3 years. The Auditor General may stagger evaluations such that a portion of all programs are evaluated in 1 year; however, every program must be evaluated at least once by September 1, 2028. Each program administrator, and third-party administrator if applicable, must post the most recent report on its website.

The bill requires the Auditor General to adopt rules related to reporting requirements.

The bill allows current contracts between a county or municipality and a current program administrator to continue without additional action. However, all parties must comply with the new law, and any contract in conflict with the new law must be updated.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.08, F.S., providing definitions for qualifying improvements to real property.

Section 2. Creates 163.081, F.S., financing qualifying improvements to residential property.

Section 3. Creates 163.082, F.S., financing qualifying improvements to commercia property.

Section 4. Creates 163.083, F.S., qualifying improvement contractors for qualifying improvements to real property.

Section 5. Creates 163.084, F.S., third-party administrators for qualifying improvements to real property.

Section 6. Creates 163.085, F.S., advertisement and solicitation for financing qualifying improvements programs.

Section 7. Creates 163.086, F.S., unenforceable financing agreements for qualifying improvements programs.

Section 8. Creates 163.087, F.S., reporting for financing qualifying improvements programs.

Section 9. Provides applicability of changes made by the act.

Section 10. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   The provision in the bill requiring certain contracts, agreements, authorizations or interlocal agreements to be amended to comply with the act may implicate Article I, Section 10, of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

The bill requires the Auditor General to engage in rulemaking related to reporting requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES