Energy, Communications & Cybersecurity Subcommittee

Tuesday, January 30, 2024
3:00 PM - 6:00 PM
Reed Hall (102 HOB)

Meeting Packet

Paul Renner
Speaker

Mike Giallombardo
Chair

The Florida House of Representatives

Commerce Committee

Energy, Communications & Cybersecurity Subcommittee

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Meeting Agenda

Tuesday, January 30, 2024
3:00 pm – 6:00 pm
Reed Hall (102 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):
- CS/HB 275 Offenses Involving Critical Infrastructure by Criminal Justice Subcommittee, Canady
- HB 927 Improvements to Real Property by Trabulsy
- HB 1645 Energy Resources by Payne

Consideration of the following proposed committee substitute(s):
- PCS for HB 683 -- Energy Infrastructure Investment

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 275 Offenses Involving Critical Infrastructure
SPONSOR(S): Criminal Justice Subcommittee, Canady and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
2) Energy, Communications & Cybersecurity Subcommittee		Bauldree	Keating
3) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 275 creates s. 812.141, F.S., to create new criminal offenses involving critical infrastructure, including:

- Improperly tampering with critical infrastructure that results in damage to such critical infrastructure that is $200 or more, or where the damage causes the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore, punishable as a second degree felony;
- Trespassing on a linear asset, or physical critical infrastructure as to which notice against entering or remaining in is given, punishable as a third degree felony;
- Accessing a computer, computer system, computer network, or electronic device owned, operated, or used by a critical infrastructure entity without authorization, punishable as a third degree felony; and
- Physically tampering with or inserting a computer contaminant into a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a critical infrastructure entity, punishable as a second degree felony.

The bill defines “critical infrastructure” to mean any linear asset, or any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls:

- A power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility or a mining facility.
- A natural gas or compressed gas compressor station, storage facility, or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction is civilly liable to the owner or operator in an amount equal to three times the amount of the actual damage sustained by the owner or operator, or three times any claim made against the owner or operator, whichever is greater, for any personal injury, wrongful death, or property damage caused by the act.

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Damage to Critical Infrastructure

According to the Cybersecurity and Infrastructure Security Agency (CISA) within the United States Department of Homeland Security, critical infrastructure are "those assets, systems, and networks that provide functions necessary for our way of life," and that are "…considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof."[1] CISA broadly classifies critical infrastructure into the following sectors: chemicals; commercial facilities; communications; critical manufacturing; dams; defense industrial bases; emergency services; energy; financial services; food and agriculture; government facilities; healthcare and public health; information technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems.[2]

Due to the vast number of critical infrastructure facilities, the difficulty in securing and monitoring such facilities, and the widespread effects that damage to such facilities can cause, critical infrastructure facilities have become a frequent target of both physical and cyber attacks in recent years.[3] In 2022, physical security incidents against electric infrastructure, such as vandalism, trespassing, and theft, increased 70 percent from the previous year.[4] In September 2022, six separate "intrusion events" occurred at Duke Energy electric substations in central Florida, resulting in several brief power outages.[5] On December 3, 2022, gunfire damaged an electrical substation in Moore County, North Carolina, leaving approximately 45,000 people without power and resulting in the death of one person.[6]

Florida Laws Prohibiting Damage to Critical Infrastructure

Under Florida law, there is not a specific criminal offense prohibiting a person from tampering with critical infrastructure. However, a person who tampers with such infrastructure either by intentionally causing damage or illegally entering on the property upon which the critical infrastructure is located could be prosecuted for committing other criminal offenses, such as criminal mischief or trespass.

Criminal Mischief

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.[7] The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage[8]	Penalty

[1] Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Security and Resilience*, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience (last visited Jan. 19, 2024).
[2] Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Sectors*, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors (last visited Jan. 19, 2024).
[3] Dinah Voyles Pulver and Grace Hauck, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, USA Today (Dec. 30, 2022) https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/ (last visited Jan. 19, 2024).
[4] National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, https://www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure (last visited Jan. 19, 2024).
[5] Andrew Dorn and Evan Lambert, *Report shows 6 "intrusions" at power stations in Florida*, WDHN (Dec. 8, 2022), https://www.wdhn.com/news/report-shows-6-intrusions-at-power-stations-in-florida/ (last visited Jan. 19, 2024).
[6] John Nagy and Jonathan Bym, *Still no arrests, but warrants reveal more details on Moore County power grid attacks*, The News & Observer (Dec. 16, 2023), https://www.newsobserver.com./news/state/north-carolina/article283121923.html (last visited Jan. 19, 2024).
[7] S. 806.13(1)(a), F.S.
[8] S. 806.13(1)(b), F.S.

≤ $200	Second degree misdemeanor[9]
> $200 but ≤ $1,000	First degree misdemeanor[10]
> $1,000	Third degree felony[11]

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction[12] or the nature of the property damaged, including when a person damages:

- Property that results in the interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore.[13]
- A church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued at greater than $200.[14]
- A memorial[15] or historic property,[16] if the damage is valued at greater than $200.[17]
- A public telephone, regardless of the value of the damage.[18]
- A sexually violent predator detention or commitment facility, if the damage is valued at greater than $200.[19]

Trespass

A person commits the offense of trespass on property other than a structure[20] or conveyance,[21] punishable as a first degree misdemeanor, if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property, other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or

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[9] A second degree misdemeanor is punishable by up to 60 days in jail and a $500 fine. Ss. 775.082 or 775.083, F.S.
[10] A first degree misdemeanor is punishable by up to one year in jail and a $1,000 fine. Ss. 775.082 or 775.083, F.S.
[11] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[12] S. 806.13(1)(b)4., F.S.
[13] S. 806.13(1)(b)3., F.S.
[14] S. 806.13(2), F.S.
[15] "Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame.
- Florida Medal of Honor Wall.
- Florida Veterans' Hall of Fame.
- POW-MIA Chair of Honor Memorial.
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.
- Florida Law Enforcement Officers' Hall of Fame.
- Florida Holocaust Memorial.
- Florida Slavery Memorial.
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

S. 806.135(1)(b), F.S.
[16] "Historic property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. S. 806.135(1)(a), F.S.
[17] S. 806.13(3), F.S.
[18] S. 806.13(4), F.S.
[19] S. 806.13(5), F.S.
[20] "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.
[21] "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- If the property is the unenclosed curtilage[22] of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.[23]

A trespass offense is enhanced to a third degree felony if:

- A person becomes armed with a firearm or other dangerous weapon during the commission of the offense;[24] or
- The property trespassed upon is any of the following and the property complies with specified posting of notice requirements:
  - A construction site;[25]
  - Commercial horticulture property;[26]
  - An agricultural site for testing or research purposes;[27]
  - A certified domestic violence center;[28]
  - An agricultural chemicals manufacturing facility;[29] or
  - The operational area of an airport, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area.[30]

Offenses Against Computers

Under s. 815.06, F.S., a person commits an offense against users of computers, computer systems, computers networks, or electronic devices if he or she willfully, knowingly, and without authorization or exceeding authorization:

- Accesses or causes to be accessed any computer,[31] computer system,[32] computer network,[33] or electronic device[34] with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer containment into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including

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[22] "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.
[23] S. 810.09(1)(a), F.S.
[24] S. 810.09(2)(c), F.S.
[25] S. 810.09(2)(d), F.S.
[26] S. 810.09(2)(e), F.S.
[27] S. 810.09(2)(f), F.S.
[28] S. 810.09(2)(g), F.S.
[29] S. 810.09(2)(i), F.S.
[30] S. 810.09(2)(j), F.S.
[31] "Computer" means an internally programmed, automatic device that performs data processing. S. 815.03(2), F.S.
[32] "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files. S. 815.03(7), F.S.
[33] "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities. S. 815.03(4), F.S.
[34] "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose. S. 815.03(9), F.S.

accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Generally, a person who commits a violation of s. 815.06, F.S., commits a third degree felony. A person commits a second degree felony if he or she commits a violation of s. 815.06, F.S., that interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.[35]

Additionally, under s. 815.061, F.S., a person commits a third degree felony if he or she willfully, knowingly and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.[36] A person commits a second degree felony if he or she willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility.[37]

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.[38] If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.[39]

Effect of Proposed Changes

CS/HB 275 creates s. 812.141, F.S., to create various new criminal offenses involving critical infrastructure.

Improperly Tampering with Critical Infrastructure

The bill prohibits a person from improperly tampering with critical infrastructure resulting in damage to critical infrastructure that is $200 or more, or if such damage results in the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore. A violation of the prohibition is punishable as a second degree felony.

The bill defines the term "critical infrastructure" to mean any of the following:

- Any linear asset; or
- Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls:
  - An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
  - A chemical or rubber manufacturing or storage facility.
  - A mining facility.
  - A natural gas or compressed gas compressor station, storage facility, or pipeline.

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[35] S. 815.06(3)(b)3., F.S. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S

[36] S. 815.061(2)(a), F.S.

[37] S. 815.061(2)(b), F.S.

[38] S. 921.0022, F.S.

[39] S. 921.0023, F.S.

- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
    - A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
    - Any portion of an aboveground oil or gas pipeline.
    - A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
    - A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
    - A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
    - A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
    - A transmission facility used by a federally licensed radio or television station.
    - A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
    - Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
    - Dams and other water control structures.

The bill defines “linear asset” as any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, or any attachments thereto.

Under the bill, “improperly tampers” means, to knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or
- Accessing without authorization, introducing malware, or taking any other action that compromises the integrity or availability of the critical infrastructure’s digital systems.

The bill does not rank the offense of improperly tampering with critical infrastructure on the OSRC. As such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill specifies that a person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction is civilly liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times:

- The actual damage sustained by the owner or operator due to any property damage, personal injury, or wrongful death caused by the act; or
- Any claim made against the owner or operator for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the criminal act, whichever is greater.

<u>Trespass on Critical Infrastructure</u>

The bill prohibits a person from willfully entering or remaining on specified property without being authorized, licensed, or invited to do so, including:

- Any linear asset; or

- Physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.

A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Unauthorized Access to/Tampering with Computers

The bill prohibits a person from willfully, knowingly, and without authorization, gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized. A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Finally, the bill prohibits a person from willfully, knowingly, and without authorization, physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure. A violation of the prohibition is a second degree felony. The bill does not rank the offense and as such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill defines the following terms to have the same meaning as in s. 815.03, F.S.:

- "Computer" means an internally programmed, automatic device that performs data processing.
- "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.
- "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.
- "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 812.141, F.S., relating to offenses involving critical infrastructure; improper tampering; civil remedies; trespass on critical infrastructure; computer offenses involving critical infrastructure.

Section 2: 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and one strike-all amendment to the PCS and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Added additional facilities, including the cyber or virtual assets of a critical infrastructure facility, to the definition of "critical infrastructure."
- Expanded the definition of "improperly tampers" to prohibit the unauthorized access, introduction of malware, or taking any other action that compromises the integrity or availability of a critical infrastructure's digital systems.
- Required improper tampering to result in damage to critical infrastructure of $200 or greater for the penalty in the bill to apply.
- Prohibited a person from trespassing on critical infrastructure, a violation of which is punishable as a third degree felony, and provided notice and posting requirements for the trespass offense to apply.
- Prohibited a person from willfully, knowingly, and without authorization, gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized, a violation of which is punishable as a third degree felony.

- Prohibited a person from physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure, a violation of which is punishable as a second degree felony.
- Deleted a provision that specified that a that a prosecution for an offense committed before July 1, 2024, is not abated or affected by the bill.

The strike-all amendment differed from the PCS as it:

- Defined the term “linear asset.”
- Included any linear asset within the definition of “critical infrastructure.”
- Prohibited a person from improperly tampering with critical infrastructure that results in the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore, a violation of which is punishable as a second degree felony.
- Prohibited a person from trespassing on a linear asset, a violation of which is punishable as a third degree felony.
- Deleted specific notice and posting requirements for the offense of trespassing on critical infrastructure.
- Required a violation of the prohibition against physical tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disrupting in any service delivered by critical infrastructure to be made willfully, knowingly, and without authorization.
- Defined the terms “computer,” “computer system,” “computer network,” and “electronic device.”
- Made technical changes to improve clarity, align provisions in the bill, and improve the structure of the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to offenses involving critical
3 infrastructure; creating s. 812.141, F.S.; providing
4 definitions; providing criminal penalties for
5 improperly tampering with critical infrastructure
6 resulting in specified monetary damage or cost to
7 restore; providing for civil liability upon a
8 conviction for such violations; providing criminal
9 penalties for trespass upon critical infrastructure;
10 providing notice requirements; providing criminal
11 penalties for the unauthorized access to or tampering
12 with specified electronic devices or networks of
13 critical infrastructure; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 812.141, Florida Statutes, is created
18 to read:
19 812.141 Offenses involving critical infrastructure;
20 improper tampering; civil remedies; trespass on critical
21 infrastructure; computer offenses involving critical
22 infrastructure.—
23 (1) For purposes of this section, the term:
24 (a) "Critical infrastructure" means:
25 1. Any linear asset; or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26 2. Any of the following for which the owner or operator
27 thereof has employed physical or digital measures designed to
28 exclude unauthorized persons, including, but not limited to,
29 fences, barriers, guard posts, identity and access management,
30 firewalls, virtual private networks, encryption, multifactor
31 authentication, passwords, or other cybersecurity systems and
32 controls:
33 a. An electric power generation, transmission, or
34 distribution facility, or a substation, a switching station, or
35 an electrical control center.
36 b. A chemical or rubber manufacturing or storage facility.
37 c. A mining facility.
38 d. A natural gas or compressed gas compressor station,
39 storage facility, or pipeline.
40 e. A gas processing plant, including a plant used in the
41 processing, treatment, or fractionation of natural gas.
42 f. A liquid natural gas or propane gas terminal or storage
43 facility with a capacity of 4,000 gallons or more.
44 g. Any portion of an aboveground oil or gas pipeline.
45 h. A wireless or wired communications network, including
46 the tower, antennae, support structures, and all associated
47 ground-based equipment, including equipment intended to provide
48 communications to governmental entities, including, but not
49 limited to, law enforcement agencies, fire emergency medical
50 services, emergency management agencies, or any other

51 governmental entity.
52 i. A water intake structure, water treatment facility,
53 wastewater treatment plant, pump station, or lift station.
54 j. A deepwater port, railroad switching yard, airport,
55 trucking terminal, or other freight transportation facility.
56 k. A facility used for the operation, landing, takeoff, or
57 surface maneuvering of vehicles, aircraft, or spacecraft.
58 l. A transmission facility used by a federally licensed
59 radio or television station.
60 m. A military base or military facility conducting
61 research and development of military weapons systems,
62 subsystems, components, or parts.
63 n. A civilian defense industrial base conducting research
64 and development of military weapons systems, subsystems,
65 components, or parts.
66 o. Cyber or virtual assets, including electronic systems,
67 networks, servers, data centers, devices, hardware, software, or
68 data that are essential to the reliable operations, monitoring,
69 and security of any critical infrastructure.
70 p. Dams and other water control structures.
71 (b) "Improperly tampers" means to knowingly and
72 intentionally cause, or attempt to cause, a significant
73 interruption or impairment of a function of critical
74 infrastructure by:
75 1. Changing the physical location or physical or virtual

76 condition of the critical infrastructure, or any portion
77 thereof, without permission or authority to do so;
78 2. Otherwise moving, damaging, or destroying the critical
79 infrastructure or any portion thereof, without permission or
80 authority to do so; or
81 3. Accessing without authorization, introducing malware,
82 or taking any other action that compromises the integrity or
83 availability of the critical infrastructure's digital systems.
84 (c) "Linear asset" means any electric distribution or
85 transmission asset, gas distribution or transmission pipeline,
86 communication wirelines, or railway, and any attachments
87 thereto.
88 (2) A person who improperly tampers with critical
89 infrastructure resulting in damage to critical infrastructure
90 that is $200 or more or in the interruption or impairment of the
91 function of critical infrastructure which costs $200 or more in
92 labor and supplies to restore, commits a felony of the second
93 degree, punishable as provided in s. 775.082, s. 775.083, or s.
94 775.084.
95 (3) A person who is found in a civil action to have
96 improperly tampered with critical infrastructure based on a
97 conviction for a violation of subsection (2) is liable to the
98 owner or operator of the critical infrastructure for damages in
99 an amount equal to three times the actual damage sustained by
100 the owner or operator due to any property damage, personal

101 injury, or wrongful death, caused by the act or an amount equal
102 to three times any claim made against the owner or operator for
103 any property damage, personal injury, or wrongful death caused
104 by the malfunction of the critical infrastructure resulting from
105 the act, whichever is greater.
106 (4) A person commits the offense of trespass on critical
107 infrastructure, a felony of the third degree, punishable as
108 provided in s. 775.082, s. 775.083, or s. 775.084, if he or she
109 without being authorized, licensed, or invited, willfully enters
110 upon or remains on:
111 (a) A linear asset; or
112 (b) Physical critical infrastructure as to which notice
113 against entering or remaining in is given, either by actual
114 communication to the offender or by posting, fencing, or
115 cultivation as described in s. 810.011.
116 (5)(a) A person who willfully, knowingly, and without
117 authorization gains access to a computer, a computer system, a
118 computer network, or an electronic device that is owned,
119 operated, or used by any critical infrastructure entity while
120 knowing that such access is unauthorized commits a felony of the
121 third degree, punishable as provided in s. 775.082, s. 775.083,
122 or s. 775.084.
123 (b) A person who willfully, knowingly, and without
124 authorization physically tampers with, inserts a computer
125 contaminant into, or otherwise transmits commands or electronic

CODING: Words stricken are deletions; words underlined are additions.

126 communications to, a computer, a computer system, a computer
127 network, or an electronic device that causes a disruption in any
128 service delivered by any critical infrastructure commits a
129 felony of the second degree, punishable as provided in s.
130 775.082, s. 775.083, or s. 775.084.
131 (c) For purposes of this subsection, the terms "computer,"
132 "computer system," "computer network," and "electronic device"
133 have the same meanings as in s. 815.03.
134 Section 2. This act shall take effect July 1, 2024.

Energy, Communications & Cybersecurity Subcommittee
CS/HB 275 by Rep. Canady
Offenses Involving Critical Infrastructure

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Canady (lines 110-112):

- Removes trespassing on a linear asset from the crime of trespass on critical infrastructure.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Committee/Subcommittee hearing bill: Energy, Communications &
2 Cybersecurity Subcommittee
3 Representative Canady offered the following:
4
5 **Amendment**
6 Remove lines 110-112 and insert:
7 upon or remains on physical critical infrastructure as to which
8 notice
9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 927 Improvements to Real Property
SPONSOR(S): Trabulsy
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Keating	Keating
2) Ways & Means Committee			
3) State Affairs Committee			

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 separate administrator.

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

- Clarifying that applicants under a qualifying improvement program approved by a county or municipality for residential or commercial properties are limited to the property owners located in that county or municipality.
- Expanding eligible "qualifying improvements" to include:
  - For residential properties: wastewater improvements, such as advanced onsite sewage treatment and disposal systems and septic-to-sewer conversions, and flood and water damage mitigation improvements, such as structure elevation, seawalls, and other improvements that qualify for reductions in flood insurance premiums.
  - For commercial properties: stormwater and flood 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 wind-resistance improvements on new construction.
- Requiring the holder or servicer of a mortgage that encumbers an applicant's property to provide consent:
  - For residential properties: for the applicant to exceed a 97% ratio of property-related debt to the property's fair market value as determined by a certified residential appraiser.
  - For commercial properties: for the applicant to finance any qualifying improvement through the program.
- Authorizing the use of a qualifying improvement program to refinance qualifying improvements.
- Adding new underwriting requirements for residential properties, including, among other things, a determination that the property owner is able to repay based on a review of income of all residents at the property.
- Providing new terms and requirements for residential properties, including:
  - Written and oral disclosure requirements.
  - Maximum terms for financing agreements based on the useful life of financed improvements.
  - A rescission period of 5 business days.
  - Requirements for enrolling, monitoring, suspending, and releasing funds to program contractors.
  - Requirements for program marketing, and a prohibition on kickbacks to contractors.
- Providing new terms for commercial properties, including:
  - Allowing the property owner to execute a financing agreement before a certificate of occupancy or evidence of completion is issued and allowing for progress payments.
  - Providing terms for the use of qualified improvement programs by "nongovernmental lessees."
- Requiring an annual report from each local government that has authorized a qualifying improvement program.

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]

Federal Housing Finance Agency and Super-Priority Liens

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 first-lien PACE loan 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 with a first-lien PACE loan 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 the 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, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).

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 the separate legal entities formed by interlocal agreement 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] 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

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[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.

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.

Definitions

The bill creates and uses the term "qualifying improvement program" to refer to the programs used in Florida to finance qualifying improvements and creates definitions for additional terms related to these programs, as follows:

- *Qualifying improvement program* means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on residential or commercial real property.
- *Program administrator* means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government has contracted to administer a qualifying improvement program.
- *Residential property* means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.
- *Commercial property* means real property other than residential property which will be or has been improved by a qualifying improvement, including, but not limited to, the following:
    - A multifamily residential property composed of five or more dwelling units;
    - A commercial real property;
    - An industrial building or property;
    - An agricultural property;
    - A nonprofit-owned property;
    - A long-term care facility, including a nursing home or an assisted living facility; or
    - A government commercial property.
- *Government commercial property* means real property owned by a local government and leased to a nongovernmental lessee where the usage by the lessee meets the definition of commercial property.
- *Nongovernmental lessee* means a person or an entity other than a local government which leases government commercial property.
- *Qualifying improvement contractor* means an independent contractor who has been enrolled under a qualifying improvement program to install or otherwise perform work on qualifying improvements on residential property which are financed through the program.
- *Facility* means all or any portion of a building, structure, or site improvement, element, or pedestrian or vehicular route located on a site as defined s. 202 of the 2020 Florida Building Code.

Jurisdictional Limits of Qualifying Improvement Programs

The bill modifies the definition of "local government" to specify that, in addition to a county, municipality, or dependent special district, the term means a separate legal entity created by interlocal agreement under s. 163.01(7), F.S., which has jurisdiction only within the boundaries of the participating members of the interlocal agreement. Consistent with this change, the bill provides that a local government may, by ordinance or resolution, authorize a qualifying improvement program for residential or commercial property in that county or municipality and limits applicants to property owners located in that county or municipality. These provisions appear to address the issue involving FPFA offering PACE financing statewide, including in jurisdictions that have not joined FPFA or that have not offered PACE programs.

Eligible 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 expand the types of projects a qualifying improvement program may finance.

For residential property, the bill adds certain wastewater improvements and flood and water damage mitigation and resiliency improvements as qualifying improvements.

Wastewater improvements include:
- Removing, replacing or improving an onsite sewage treatment and disposal system with a secondary or advanced onsite sewage treatment and disposable system or technology;
- Replacing or converting an onsite sewage and disposal system to a central sewerage system or distributed sewerage system; and
- Removing, repairing, or modifying an onsite sewage treatment and disposal system.

Residential flood and water damage mitigation and resiliency improvements include:
- Raising a structure above the base flood elevation to reduce flood damage;
- Constructing a flood diversion apparatus or seawall improvement that includes seawall repairs and seawall replacements;
- Purchasing flood-damage-resistant building materials;
- Making electrical, mechanical, plumbing, or other system improvements that reduce flood damage; or
- Making other improvements that qualify for reductions in flood insurance premiums.

For commercial property, the bill adds the following as qualifying improvements:
- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code; and
- Resiliency improvements, including creation or improvement of stormwater and flood resiliency (including shoreline improvements) and any other improvements: (a) necessary to achieve a sustainable building rating or compliance with a national model resiliency standard; or (b) made to achieve wind or flood insurance rate reductions, including building elevation.

Other Uses for PACE Financing

The bill expands the authorized uses of PACE financing. First, the bill adds that PACE financing may be used to *refinance* qualifying improvements on any eligible property. Second, the bill authorizes new uses for PACE financing on commercial property, including wind resistance improvements on property under new construction and improvements by nongovernmental lessees to government commercial property. The bill provides that a financing agreement for government commercial property must be executed by the nongovernmental lessee with the written consent of the governmental lessor, with evidence of this consent provided to the local government operating the qualifying improvement program. A financing agreement with the nongovernmental lessee must provide that the lessee is the only party obligated to pay the assessment.

The bill authorizes a local government or program administrator that offers PACE financing program for residential properties to finance qualifying improvements of up to $750,000 on commercial properties. This provision appears to allow program administrators to offer PACE financing in certain circumstances to commercial properties where the local government may not have approved a commercial PACE financing program. The bill provides that such financing requires the use of generally accepted underwriting criteria for businesses.

Eligibility Requirements for PACE Financing

The bill provides that a financing agreement for a residential property may not be approved unless the local government or program administrator acting on its behalf determines that, based on a review of public records derived from a commercially accepted source and statements and records of the property owner or credit reports, the following conditions, in addition to those specified in current law, have been met:

- The property owner agrees to receive in writing the disclosure statements required by the bill, as described below.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The term of the financing agreement does not exceed:
    - For a single qualifying improvement, the estimated useful life[38] of the qualifying improvement.
    - For multiple qualifying improvements, the lesser of (a) thirty years or (b) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.
- The property owner is not currently the subject of bankruptcy proceedings.
- The property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- The property is not a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose the gift does not invalidate a financing agreement or any obligation thereunder.
- If the improvement is for solar energy, the property owner has obtained estimates from at least two unaffiliated, competitive entities, one of which is a qualifying improvement contractor, for the qualifying improvement to be financed.[39]
- The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.[40]

The bill provides that a financing agreement for a commercial property may not be approved unless the local government or program administrator acting on its behalf determines that, based on a review of public records derived from a commercially accepted source and statements and records of the property owner, the following conditions, in addition to those specified in current law, have been met:

- Delinquency in payment of property taxes or other assessments on a property during the preceding 3 years do not preclude the use of PACE financing if such taxes and assessments are current.
- Involuntary liens on a property do not preclude the use of PACE financing if not greater than $10,000.
- Recorded notices of default or other evidence of property-based debt delinquency during the preceding 3 years do not preclude use of PACE financing if released during that time.

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). The bill provides an exception for commercial properties that finance qualifying improvements under $750,000 through a residential PACE program as allowed under the bill.

Ability to Repay for Residential Property Owners

The bill requires that, prior to approval of financing for a qualifying improvement on residential property, the local government or program administrator must determine that the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement. To make this determination, the local government or program administrator must review only the property owner's household income, which must demonstrate that the total estimated annual payment amount for all

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[38] The bill provides that the useful life of a qualifying improvement must be established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.
[39] The bill provides the property owner may waive this requirement in writing.
[40] The bill provides that the failure of a property owner to disclose this information does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized.

PACE financing agreements on the property do not exceed 10 percent of the property owner's annual household income. In reviewing household income, the local government or program administrator:

- When determining household income, may include the income of any persons who reside on the property but who are not property owners.
- May consider statements by the property owner.
- May not consider the equity in the property that will secure the non-ad valorem assessment.
- May confirm income by use of any of the following:
  - Information or income models gathered from or prepared by reputable third parties which provide commercially acceptable evidence of the property owner's household income;
  - Federal and state tax returns;
  - Statements prepared by a certified public accountant;
  - Bank statements;
  - Credit reports;
  - Retirement accounts;
  - Social security statements;
  - Trust documents; or
  - Any other reputable source of financial information.

The bill provides that if a court or tribunal determines by clear and convincing evidence that the determination of a property owner's ability to repay was not "objectively reasonable" based on information provided by the property owner, the annual assessment must be reduced by an amount that is within the property owner's ability to repay. Under the bill, the court's determination does not reduce the total amount owed on the assessment.

The bill provides that if ownership of a residential property is vested in a corporate entity or form and the estimated amount of financing is less than $750,000, the local government or program administrator, as applicable, must use generally accepted underwriting criteria for businesses if household income is not applicable

Debt-to-Value Limitations on PACE Assessments for Residential Property Owners

Under current law, the total amount of any PACE assessment on residential property may not exceed 20 percent of a property's just value, without consent of the holder or servicer of a mortgage secured by a property. The bill replaces the "just value" standard in current law[41] with a "fair market value" standard. The bill requires that fair market value be determined using third-party valuations based on reputable methodologies.

The bill further provides that, for residential property, the combined mortgage-related debt and the total amount of any PACE assessments on the property may not exceed 97 percent of the property's fair market value, absent consent of the holder or servicer of a mortgage secured by the property. However, this limit can be exceeded if a property owner fails to disclose whether other PACE assessments have already been recorded, or funded but no yet recorded, on the property.

Disclosures to Residential Property Owners

The bill requires that local government or program administrator, as applicable, to develop a written disclosure form that must be provided to a <u>residential</u> property owner before executing a financing agreement. This disclosure may be presented to the property owner in electronic format and must contain the following key terms:

- A description of the qualifying improvement;
- The estimated total financed amount, including the cost of the qualifying improvement, ancillary work, program fees, and prepaid interest, if any;
- The annual non-ad valorem assessment process and estimated annual payment schedule;
- The estimated amount of the annual non-ad valorem assessment;

[41] Under current law, "just value" is the value of the property as determined by the county property appraiser.

- The term of the total financed amount;
- The interest rate for the financed amount;
- The estimated annual percentage rate;
- The total estimated annual costs that the residential property owner will be required to pay under the assessment contract, including program fees;
- The total estimated average monthly equivalent of funds the residential property owner would have to save per month in order to pay the annual costs of the non-ad valorem assessment, including program fees;
- The estimated date when the residential property owner's first property tax payment that includes the non-ad valorem assessment, will be due.

The bill provides that when a change order or proposed change order on a project significantly increases the cost or significantly expands the scope of the original project, the local government or program administrator, as applicable, must notify the property owner, confirm the change with the property owner, and provide an updated written disclosure form.

The bill requires that the written disclosure form must also contain the following statements, which must be individually acknowledged in writing by the residential property owner :

- "I understand that if I sell or refinance the property, I may be required to pay off the outstanding financed amount as a condition of the sale or the refinance of the property." (This disclosure must be made in at least 24-point, bold font.)
- "I understand that the annual non-ad valorem assessment will be paid when property taxes are paid and will result in a lien being placed on my property."
- "I understand that the annual non-ad valorem assessment will be added to my property tax bill and that if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."
- "I understand that if I fail to pay the annual non-ad valorem assessment, I may incur penalties and fees and the local government may issue a tax certificate that might result in the loss of my property."
- “I understand that any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.”
- "I understand that I have 5 days to cancel the financing agreement and that this 5-day period expires at midnight on the 5th business day after I sign the agreement."
- “I understand that the local government, program administrator, or qualifying improvement contractor does not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.
- "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

The bill provides that the local government or program administrator, before a notice to proceed is issued on residential property, must conduct an oral, recorded telephone call with at least one property owner or an authorized representative. The program administrator must ask the property owner or authorized representative if he or she would like to communicate primarily in a language other than English and must use plain language. On the telephone call, the local government or program administrator must confirm all of the following with the property owner or authorized representative:

- That at least one property owner has access to a copy of the financing agreement and financing estimates and disclosures.
- The qualifying improvements being financed.
- The total estimated annual costs that the property owner will have to pay under the financing agreement, including program fees.
- The total estimated average monthly equivalent amount of funds the property owner would have to save in order to pay the annual costs of the assessment, including program fees.
- The estimated due date for the property owner's first property tax payment that includes the assessment.
- The term of the financing agreement.

- That payments for the financing agreement will cause the property owner's annual property tax bill to increase, and that payments will be made through an additional annual non-ad valorem assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the property owner's mortgage escrow account.
- That the property owner has disclosed whether he or she has received or is seeking additional non-ad valorem assessments funded under this program, and that the owner has disclosed all other such assessments which are or are projected to be placed on the property.
- That the property will be subject to a lien during the term of the financing agreement and that the obligations under the agreement may be required to be paid in full before the property owner sells or refinances the property.
- That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.
- That the local government, program administrator, or qualifying improvement contractor does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the financing agreement.

The local government or program administrator may not leave a voicemail to satisfy this requirement.

Financing Agreements

The bill limits the term of a financing agreement for a single qualifying improvement to the estimated useful life[42] of the improvement. For multiple qualifying improvements, the term of a financing agreement is limited to the lesser of: (1) 30 years; or (2) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The bill prohibits a financing agreement on residential property from including a negative amortization schedule,[43] a balloon payment, or prepayment fees other than nominal administrative costs.

The bill allows a residential property owner to cancel a financing agreement, without any financial penalty from the program administrator, within 5 business days after signing the financing agreement. The bill provides for relief to such property owners if a contractor has begun work on, or delivered chattel or fixtures to, the property when the property owner has exercised timely its right to cancel the financing agreement. The bill provides that a printed or electronic cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement which allows the property owner to cancel the agreement.

For qualifying improvements to commercial property, the bill provides that a financing agreement may be executed before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Further, the bill provides that progress payments, or payments made before completion, are allowed for commercial property if the property owner, upon request for a final progress payment, subsequently provides written verification that the qualifying improvements are completed and operating as intended.

Qualifying Improvement Contractors

The bill establishes terms for the enrollment and oversight of qualifying improvement contractors by the local governments or program administrator, as applicable. These provisions apply only with respect to improvements to residential property.

[42] The bill provides that the local government or program administrator, as applicable, shall determine the useful life of a qualifying improvement using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.
[43] The bill provides that capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

Before enrolling a contractor to install qualifying improvements, the bill provides that a local government or program administrator, as applicable, must make a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage. Each local government or program administrator must also obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and rules.

The bill further provides that each local government or program administrator must maintain a process to enroll new contractors which includes reasonable review of the following for each contractor: relevant work or project history; financial and reputational background checks; and status on the Better Business Bureau online platform or another online platform that tracks contractor reviews. Each local government or program administrator must also establish and maintain a process for monitoring qualifying improvement contractors with regard to performance and compliance with program policies and must implement policies for suspending, reinstating, and terminating qualifying improvement contractors based on violations of program policies or unscrupulous behavior.

The bill prohibits a program administrator, either directly or through an affiliate, from becoming enrolled as a qualifying improvement contractor.

Before disbursing funds to a contractor for a qualifying improvement on residential property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the final permit for the qualifying improvement has been closed with all permit requirements satisfied.

The bill prohibits a local government or program administrator from disclosing to a qualifying improvement contractor or to a third party engaged in soliciting assessment contracts the maximum financing amount for which a residential property owner is eligible. Program administrators are also prohibited from providing a qualifying improvement contractor with any payment, fee, or kickback in exchange for referring financing business relating to a specific financing agreement on residential property. The bill provides, however that a local government or program administrator may provide information or services to a qualifying improvement contractor to facilitate the installation of a qualifying improvement for a property owner.

The bill prohibits a qualifying improvement contractor from providing a different price for a qualifying improvement financed under a qualifying improvement program than the contractor would otherwise reasonably provide if the qualifying improvement was not being financed through a financing agreement under a qualifying improvement program.

Qualifying Improvement Program Marketing to Residential Property Owners

The bill prohibits local governments, program administrators, or qualifying improvement contractors, or any third party engaged in marketing on behalf of these entities, from representing to residential property owners:

- That non-ad valorem assessment under a qualifying improvement program is a government assistance program;
- That qualifying improvements are free or that financing related to a non-ad valorem assessment under a qualifying improvement program is free or provided at no cost;
- That the financing of a qualifying improvement under a qualifying improvement program does not require the property owner to repay the financial obligation; or
- The tax deductibility of a non-ad valorem assessment under a qualifying improvement program.

The bill provides that a qualifying improvement contractor may not advertise the availability of financing agreements for or solicit residential property owners on behalf of the local government or program administrator unless:

- The qualifying improvement contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction in which it operates and provides proof of having the required bond and insurance coverage amounts; and
- The local government or program administrator, as applicable, obtains the qualifying improvement contractor's or third party's written agreement that the qualifying improvement contractor or third party will comply with applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

The bill provides that a local government or program administrator may reimburse a qualifying improvement contractor or third party for its expenses in advertising and marketing campaigns and materials.

Under the bill, a program administrator may not provide any direct cash payment or other thing of material value to a residential property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a local government or program administrator may offer programs or promotions 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 owners as cash consideration.

Annual Report for Residential PACE Programs

The bill requires each local government that has authorized a qualifying improvement program for residential properties to post on its website, by April 1 of each year, an annual report for the previous calendar year. Each annual report must include the following information:

- The number 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 that funded qualifying improvements.
- The percentage, number, and dollar value of non-ad valorem assessments that funded qualifying improvements, aggregated by the category types consisting of energy efficiency, renewable energy, wind resistance, residential property wastewater, commercial property resiliency, and other commercial property qualifying improvements.
- The number of defaulted non-ad valorem assessments, including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels in default and the years in default, and the percentage of defaults by total assessments.
- A summary of all reported complaints received by the local government and its program administrators related to authorized qualifying improvements programs, including the resolution of each complaint.
- The estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

Other Provisions

The bill provides that a local government, in any contract with a program administrator, must include the right to perform annual review of the program administrator to confirm compliance with qualifying improvement programs for residential properties. Upon a determination that a program administrator has committed a substantial violation, the local government must provide notice to the program administrator and place the program administrator in a probationary program.

The bill requires a local government or program administrator to conduct regular reviews of contractors to confirm ongoing compliance with the law governing PACE contractors. Upon a determination that a contractor has committed a substantial violation, the local government or program administrator must provide notice to the contractor and place the contractor in a probationary program.

The bill updates disclosures required by sellers of real property for which a non-ad valorem assessment has been levied under a qualifying improvement program to reflect the additional types of qualifying improvements authorized by the bill.

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 and that the lien is not enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the financing agreement.

The bill provides that an assessment on commercial property for a qualifying improvement is subject to a maximum annual fee of 1 percent of the annual assessment collected or $5,000, whichever is less. Current law caps such fees at the actual cost of collection, not to exceed 2 percent of the amount collected.[44]

The bill requires program administrators to develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and residential property owner complaints.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

Section 2. 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:

To the extent that a local government or program administrator does not already impose measures similar to those in the bill, the bill may impose costs on qualifying improvement program administrators. However, by expanding eligible uses for PACE financing, the bill may result in expanded use of PACE financing, and, in turn, program administrators may earn additional revenues on PACE loans.

D. FISCAL COMMENTS:

None.

[44] Ss 197.3632(8)(c) and 192.091(2)(b), F.S.

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:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Ability to Repay

To determine a property owner's ability to repay a PACE assessment, the bill requires a determination that the total annual payment for all PACE assessments on a property does not exceed 10 percent of the property owner's household income. This determination does not account for the property owner's household expenses and other debt obligations, thus may not provide an accurate evaluation of a property owner's ability to repay a PACE assessment while meeting those expenses and debt obligations.

The bill allows the income of all persons who reside on a property, including persons with no ownership interest in the property, to be taken into account in determining the property owner's income for purposes of determining ability to repay. Persons with no ownership interest in the property, including minor children, are not responsible for repayment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to improvements to real property;
3 amending s. 163.08, F.S.; revising legislative
4 findings and intent; defining terms and revising
5 definitions; authorizing a residential or commercial
6 property owner to apply to a qualifying improvement
7 program for funding to finance an improvement and to
8 enter into a financing agreement with the local
9 government, subject to a local government ordinance or
10 resolution regarding the program; requiring the local
11 government to include in certain contracts the right
12 to perform annual reviews of the program
13 administrator; providing certain consequences for a
14 substantial violation by a program administrator;
15 authorizing a local government to incur debt for the
16 purpose of providing financing for qualifying
17 improvements; authorizing a local government to enter
18 into a financing agreement with the property owner to
19 finance or refinance a qualifying improvement;
20 providing that the financing agreement for government
21 commercial property must meet specified conditions;
22 revising and specifying public recording requirements
23 for assessment financing agreements and notices of
24 lien; providing that a financing agreement for a
25 residential property may not be approved unless the

26 local government, or the program administrator acting
27 on its behalf, determines that certain conditions are
28 met; providing that a financing agreement for a
29 commercial property may not be approved unless the
30 local government, or the program administrator acting
31 on its behalf, reasonably determines that specified
32 conditions have been met; requiring the local
33 government or program administrator to use specified
34 information and records to determine whether the
35 property owner has the ability to pay the annual non-
36 ad valorem assessment; authorizing the local
37 government or program administrator to consider
38 certain evidence and the statements by the property
39 owner regarding his or her income in confirming the
40 property owner's ability to pay; authorizing a
41 reduction in the annual assessment payment under
42 certain circumstances; providing that a property
43 owner's failure to disclose certain information does
44 not invalidate a financing agreement; requiring the
45 use of generally accepted underwriting criteria for
46 businesses in determining a property owner's ability
47 pay, under certain circumstances; specifying certain
48 requirements for a local government or program
49 administrator that offers a qualifying improvement
50 program for residential properties; requiring the

51 local government or program administrator to perform
52 certain tasks if a change order or proposed change
53 order significantly impacts an improvement project in
54 certain ways; requiring the local government or
55 program administrator to include certain statements in
56 a written disclosure form to the property owner, which
57 the property owner must agree to in writing; requiring
58 the local government or program administrator to
59 provide a printed electronic cancellation form to the
60 residential property owner by a certain date;
61 requiring an oral, recorded telephone call with the
62 residential property owner to review the details of
63 the financing agreement; authorizing a residential
64 real property owner, under certain circumstances and
65 within a certain timeframe, to cancel a financing
66 agreement without financial penalty; providing that
67 certain contracts are unenforceable and prohibiting a
68 qualifying improvement contractor from initiating work
69 under such contracts; specifying certain requirements
70 if a qualifying improvement contractor initiates work
71 on a residential property under an unenforceable
72 contract; providing a procedure that must be followed
73 if a qualifying improvement contractor has delivered
74 chattel or fixtures to a residential property pursuant
75 to an unenforceable contract; authorizing a

76 residential property owner to retain such chattel or
77 fixtures in a certain circumstance; providing that an
78 otherwise unenforceable contract is enforceable under
79 certain circumstances; prohibiting wind-resistance
80 improvements in certain buildings or facilities in a
81 financing agreement between a local government and a
82 residential property owner; authorizing the execution
83 of a financing agreement for qualifying improvements
84 before the issuance of a certain certificate or
85 certain evidence; authorizing progress payments before
86 completion of a qualifying improvement on a commercial
87 property if the property owner provides certain
88 information; providing that a financing agreement with
89 a commercial property owner may cover resiliency
90 improvements in certain buildings or facilities
91 requiring certain work to be performed by properly
92 certified or registered contractors; revising the
93 limit for a residential property's combined mortgage-
94 related debt and total non-ad valorem assessments
95 funded; providing construction; requiring the local
96 government or program administrator to have received
97 the written consent of the holders or loan servicers
98 of certain mortgages at a specified time; requiring
99 the property owner to provide written notice within a
100 specified timeframe to the holders or servicers of any

101 existing mortgages; revising the seller's disclosure
102 statements for residential and commercial properties
103 offered for sale which have assessments on them for
104 qualifying improvements; prohibiting certain items in
105 a financing agreement for residential property;
106 prohibiting a local government or program
107 administrator from enrolling a qualifying improvement
108 contractor that contracts with residential property
109 owners to install qualifying improvements unless
110 certain conditions are met; requiring a local
111 government or program administrator to maintain a
112 process to enroll new qualifying improvement
113 contractors which includes certain factors; requiring
114 the local government or program administrator to
115 monitor qualifying improvement contractors and enforce
116 certain sanctions on unscrupulous behavior;
117 prohibiting a program administrator from being
118 enrolled as a qualifying improvement contractor;
119 requiring the local government or program
120 administrator to confirm that certain work or service
121 has been completed before disbursing final funds to
122 the contractor; prohibiting a local government or
123 program administrator from disclosing maximum
124 financing amounts to certain persons; requiring that,
125 in communicating with residential property owners, the

126 local government, program administrator, or qualifying
127 improvement contractor comply with certain marketing
128 and communications guidelines; prohibiting such
129 entities from certain communication and making certain
130 statements; prohibiting a qualifying improvement
131 contractor from advertising the availability of
132 assessment financing agreements unless certain
133 exceptions apply; prohibiting a local government or
134 program administrator from providing certain payments,
135 fees, or kickbacks; authorizing a local government or
136 program administrator to provide information or
137 services to a qualifying improvement contractor to
138 facilitate certain installations; authorizing a local
139 government or program administrator to reimburse a
140 qualifying improvement contractor or third party for
141 certain expenses; prohibiting a local government or
142 program administrator from providing certain financial
143 information to a qualifying improvement contractor;
144 prohibiting a qualifying improvement contractor from
145 providing certain prices for a qualifying improvement;
146 prohibiting a local government or program
147 administrator from providing any cash payment or
148 anything of material value to a residential property
149 owner which is explicitly conditioned on a financing
150 agreement; authorizing a local government or program

151 administrator to offer certain programs or promotions;
152 requiring a local government or program administrator
153 to conduct regular reviews of qualifying improvement
154 contractors to confirm their compliance with
155 requirements; requiring each local government and
156 program administrator to develop and implement certain
157 policies and procedures; requiring a local government
158 that has authorized a residential program to post on
159 its website an annual report; specifying requirements
160 for the report; authorizing a local government or
161 program administrator that offers a qualifying
162 improvement program for residential property to
163 finance improvements on commercial property if certain
164 requirements are met; deleting construction; providing
165 an effective date.
166
167 Be It Enacted by the Legislature of the State of Florida:
168
169 Section 1. Section 163.08, Florida Statutes, is amended to
170 read:
171 163.08 Supplemental authority for improvements to real
172 property.—
173 (1)(a) In chapter 2008-227, Laws of Florida, the
174 Legislature amended the energy goal of the state comprehensive
175 plan to provide, in part, that the state shall reduce its energy

176 requirements through enhanced conservation and efficiency
177 measures in all end-use sectors and reduce atmospheric carbon
178 dioxide by promoting an increased use of renewable energy
179 resources. That act also declared it the public policy of the
180 state to play a leading role in developing and instituting
181 energy management programs that promote energy conservation,
182 energy security, and the reduction of greenhouse gases. In
183 addition to establishing policies to promote the use of
184 renewable energy, the Legislature provided for a schedule of
185 increases in energy performance of buildings subject to the
186 Florida Energy Efficiency Code for Building Construction. In
187 chapter 2008-191, Laws of Florida, the Legislature adopted new
188 energy conservation and greenhouse gas reduction comprehensive
189 planning requirements for local governments. In the 2008 general
190 election, the voters of this state approved a constitutional
191 amendment authorizing the Legislature, by general law, to
192 prohibit consideration of any change or improvement made for the
193 purpose of improving a property's resistance to wind damage or
194 the installation of a renewable energy source device in the
195 determination of the assessed value of residential real
196 property.
197 (b) The Legislature finds that all energy-consuming-
198 improved properties that are not using energy conservation
199 strategies contribute to the burden affecting all improved
200 property resulting from fossil fuel energy production. Improved

201 property that has been retrofitted with energy-related
202 qualifying improvements receives the special benefit of
203 alleviating the property's burden from energy consumption. All
204 improved properties not protected from wind damage by wind
205 resistance qualifying improvements contribute to the burden
206 affecting all improved property resulting from potential wind
207 damage. An improved commercial property constructed or ~~that has~~
208 ~~been~~ retrofitted with qualifying improvements and an improved
209 residential property retrofitted with wind resistance—qualifying
210 improvements receive ~~receives~~ the special benefit of reducing
211 the properties' ~~property's~~ burden from potential wind damage.
212 Further, the installation and operation of qualifying
213 improvements not only benefit the affected properties for which
214 the improvements are made, but also assist in fulfilling the
215 goals of the state's energy and hurricane mitigation policies.
216 Residential properties that do not use advanced technologies for
217 wastewater removal contribute to the water quality problems
218 affecting this state, particularly in coastal areas. Improved
219 residential property that has been retrofitted with an advanced
220 onsite sewage treatment and disposal system or that has been
221 converted to central sewerage significantly improves the quality
222 of water that may enter streams, lakes, rivers, aquifers, or
223 coastal areas.
224 (c) In order to make qualifying improvements more
225 affordable and assist property owners who wish to undertake such

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

226 improvements, the Legislature finds that there is a compelling
227 state interest in enabling property owners to voluntarily
228 finance such improvements with local government assistance.
229 (d) ~~(c)~~ The Legislature determines that the actions
230 authorized under this section, including, but not limited to,
231 the financing of qualifying improvements through the execution
232 of financing agreements and the related imposition of voluntary
233 assessments are reasonable and necessary to serve and achieve a
234 compelling state interest and are necessary for the prosperity
235 and welfare of the state and its property owners and
236 inhabitants.
237 (2) As used in this section, the term:
238 (a) "Commercial property" means real property, other than
239 residential property, which will be or has been improved by a
240 qualifying improvement. The term includes, but is not limited
241 to, the following:
242 1. A multifamily residential property composed of five or
243 more dwelling units;
244 2. A commercial real property;
245 3. An industrial building or property;
246 4. An agricultural property;
247 5. A nonprofit-owned property;
248 6. A long-term care facility, including a nursing home or
249 an assisted living facility; or
250 7. A government commercial property.

251 (b) "Facility" means all or any portion of a building,
252 structure, or site improvement, element, or pedestrian or
253 vehicular route located on a site as defined in s. 202 of the
254 2020 Florida Building Code.
255 (c) "Government commercial property" means real property
256 owned by a local government and leased to a nongovernmental
257 lessee when the usage by the lessee meets the definition of
258 commercial property.
259 (d)~~(a)~~ "Local government" means a county, a municipality,
260 a dependent special district as defined in s. 189.012, or a
261 separate legal entity created pursuant to s. 163.01(7) which has
262 jurisdiction only within the boundaries of the participating
263 members of an interlocal agreement.
264 (e) "Nongovernmental lessee" means a person or an entity
265 other than a local government which leases government commercial
266 property.
267 (f) "Program administrator" means an entity, including,
268 but not limited to, a for-profit or not-for-profit entity, with
269 which a local government has contracted to administer a
270 qualifying improvement program.
271 (g) "Qualifying improvement contractor" means an
272 independent contractor who has been enrolled under a qualifying
273 improvement program to install or otherwise perform work on
274 qualifying improvements on residential property which are
275 financed through the program.

276 (h) "Qualifying improvement program" means a program
277 established by a local government, alone or in partnership with
278 other local governments or a program administrator, to finance
279 qualifying improvements on residential or commercial real
280 property.
281 (i) ~~(b)~~ "Qualifying improvement": ~~improvement"~~
282 1. For residential property, includes any:
283 a. ~~1.~~ Energy conservation and efficiency improvement, which
284 is a measure to reduce consumption through conservation or a
285 more efficient use of electricity, natural gas, propane, or
286 other forms of energy on the property, including, but not
287 limited to, air sealing; installation of insulation;
288 installation of energy-efficient heating, cooling, or
289 ventilation systems; building modifications to increase the use
290 of daylight; replacement of windows; installation of energy
291 controls or energy recovery systems; installation of electric
292 vehicle charging equipment; and installation of efficient
293 lighting equipment.
294 b. ~~2.~~ Renewable energy improvement, which is the
295 installation of any system in which the electrical, mechanical,
296 or thermal energy is produced from a method that uses one or
297 more of the following fuels or energy sources: hydrogen, solar
298 energy, geothermal energy, bioenergy, and wind energy.
299 c. ~~3.~~ Wind resistance improvement, which includes, but is
300 not limited to:

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301 (I)~~a.~~ Improving the strength of the roof deck attachment;
302 (II)~~b.~~ Creating a secondary water barrier to prevent water
303 intrusion;
304 (III)~~c.~~ Installing wind-resistant shingles;
305 (IV)~~d.~~ Installing gable-end bracing;
306 (V)~~e.~~ Reinforcing roof-to-wall connections;
307 (VI)~~f.~~ Installing storm shutters; or
308 (VII)~~g.~~ Installing opening protections.
309 d. Wastewater improvement, which includes, but is not
310 limited to:
311 (I) Removing, replacing, or improving an onsite sewage
312 treatment and disposal system with a secondary or advanced
313 onsite sewage treatment and disposal system or technology;
314 (II) Replacing or converting an onsite sewage treatment
315 and disposal system to a central sewerage system or distributed
316 sewerage system, including, but not limited to, installing a
317 sewer lateral and any components necessary to connect the onsite
318 sewage treatment and disposal system or the building's plumbing
319 to a central sewerage system or distributed sewerage system; or
320 (III) Performing any removal, repairs, or modifications to
321 an onsite sewage treatment and disposal system, including any
322 repair, modification, or replacement of a system required under
323 a local ordinance enacted pursuant to ss. 381.0065 and
324 381.00651.
325 e. Flood and water damage mitigation and resiliency

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326 improvement, which includes, but is not limited to, projects and
327 installation for:
328 (I) Raising a structure above the base flood elevation to
329 reduce flood damage;
330 (II) Constructing a flood diversion apparatus or seawall
331 improvement that includes seawall repairs and seawall
332 replacements;
333 (III) Purchasing flood-damage-resistant building
334 materials;
335 (IV) Making electrical, mechanical, plumbing, or other
336 system improvements that reduce flood damage; or
337 (V) Making other improvements that qualify for reductions
338 in flood insurance premiums.
339 2. For commercial property, includes any:
340 a. Energy conservation and efficiency improvement, which
341 is a measure designed to reduce consumption through conservation
342 or a more efficient use of electricity, natural gas, propane, or
343 other forms of energy on the property, including, but not
344 limited to, air sealing; installation of insulation;
345 installation of energy-efficient heating, cooling, or
346 ventilation systems; building modifications to increase the use
347 of daylight; replacement of windows; installation of energy
348 controls or energy recovery systems; installation of electric
349 vehicle charging equipment; installation of efficient lighting
350 equipment; or any other improvements necessary to achieve a

351 sustainable building rating or compliance with a national model
352 green building code.
353 b. Renewable energy improvement, which is the installation
354 of any system in which the electrical, mechanical, or thermal
355 energy is produced from a method that uses one or more of the
356 following fuels or energy sources: hydrogen, solar energy,
357 geothermal energy, bioenergy, or wind energy.
358 c. Resiliency improvement, which includes, but is not
359 limited to:
360 (I) Improving the strength of the roof deck attachment;
361 (II) Creating a secondary water barrier to prevent water
362 intrusion;
363 (III) Installing wind-resistant shingles;
364 (IV) Installing gable-end bracing;
365 (V) Reinforcing roof-to-wall connections;
366 (VI) Installing storm shutters;
367 (VII) Installing opening protections;
368 (VIII) Creating or improving stormwater and flood
369 resiliency, including shoreline improvements; or
370 (IX) Making any other improvements necessary to achieve a
371 sustainable building rating or compliance with a national model
372 resiliency standard and any improvements to a structure to
373 achieve wind or flood insurance rate reductions, including
374 building elevation.
375 (j) "Residential property" means a residential real

376 property composed of four or fewer dwelling units which has been
377 or will be improved by a qualifying improvement.
378 (3) A local government may levy non-ad valorem assessments
379 to fund qualifying improvements.
380 (4)(a) Subject to a local government ordinance or
381 resolution authorizing a local government to offer a qualifying
382 improvement program for residential property or a qualifying
383 improvement program for commercial property in that county or
384 municipality, a residential or commercial property owner located
385 in that county or municipality may apply to the appropriate
386 qualifying improvement program ~~local government~~ for funding to
387 finance a qualifying improvement and enter into a financing
388 agreement with the local government. Costs incurred by the local
389 government for such purpose may be collected as a non-ad valorem
390 assessment. A non-ad valorem assessment must ~~shall~~ be collected
391 pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a),
392 is ~~shall~~ not ~~be~~ subject to discount for early payment. However,
393 the notice and adoption requirements of s. 197.3632(4) do not
394 apply if this section is used and complied with, and the intent
395 resolution, publication of notice, and mailed notices to the
396 property appraiser, tax collector, and Department of Revenue
397 required by s. 197.3632(3)(a) may be provided on or before
398 August 15 in conjunction with any non-ad valorem assessment
399 authorized by this section, if the property appraiser, tax
400 collector, and local government agree.

401 (b) Notwithstanding ss. 192.091(2)(b) and 197.3632(8)(c),
402 a non-ad valorem assessment on a commercial property securing
403 financing for a qualifying improvement may not exceed a maximum
404 annual fee of 1 percent of the annual non-ad valorem assessment
405 collected or $5,000, whichever is less.
406 (5) Pursuant to this section or as otherwise provided by
407 law or pursuant to a local government's home rule power, a local
408 government may enter into a partnership with one or more local
409 governments for the purpose of providing and financing
410 qualifying improvements.
411 (6) A qualifying improvement program may be administered
412 by a for-profit entity or a not-for-profit organization on
413 behalf of and at the discretion of the local government. The
414 local government must include, in any contract with the program
415 administrator, the right to perform annual reviews of the
416 program administrator to confirm compliance with qualifying
417 improvement programs for residential properties. In the event
418 the local government determines that there is a substantial
419 violation by a program administrator, the local government must
420 provide the program administrator with notice of the violation
421 and place the program administrator in a probationary program.
422 (7) A local government may incur debt for the purpose of
423 providing financing for qualifying ~~such~~ improvements, which debt
424 is payable from revenues received from the improved property~~,~~ or
425 any other available revenue source authorized by law.

426 (8)(a) A local government may enter into a financing
427 agreement to finance or refinance a qualifying improvement only
428 with the record owner of the affected property. For government
429 commercial property, the financing agreement must be executed by
430 the nongovernmental lessee with the written consent of the
431 governmental lessor. Evidence of such consent must be provided
432 to the local government. The financing agreement with the
433 nongovernmental lessee must provide that the nongovernmental
434 lessee is the only party obligated to pay the assessment.
435 (b) Any financing agreement entered into pursuant to this
436 section or a summary memorandum of such agreement must ~~shall~~ be
437 submitted for recording ~~recorded~~ in the public records of the
438 county within which the property is located by the sponsoring
439 unit of local government within 10 ~~5~~ days after execution of the
440 agreement. The recorded agreement provides ~~shall provide~~
441 constructive notice that the non-ad valorem assessment to be
442 levied on the property constitutes a lien of equal dignity to
443 county taxes and assessments from the date of recordation. A
444 notice of lien for the full amount of the financing may be
445 recorded in the public records of the county where the property
446 is located. Such lien is not enforceable in a manner that
447 results in the acceleration of the remaining nondelinquent
448 unpaid balance under the assessment financing agreement.
449 (9)(a) ~~Before entering into~~ A financing agreement for a
450 residential property may not be approved unless~~,~~ the local

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451 government, or a program administrator acting on its behalf,
452 determines, based on a review of public records derived from a
453 commercially accepted source, and the statements and records of
454 the property owner or the property owner's credit reports, ~~shall~~
455 ~~reasonably determine~~ that all of the following conditions have
456 been met:
457 1. All property taxes and any other assessments levied on
458 the same bill as property taxes are current ~~paid~~ and have not
459 been delinquent for the preceding 3 years or the property
460 owner's period of ownership, whichever is less.~~;~~
461 2. ~~That~~ There are no involuntary liens, including, but not
462 limited to, construction liens on the property.~~;~~
463 3. There are ~~that~~ no notices of default or other evidence
464 of property-based debt delinquency which have been recorded
465 during the preceding 3 years or the property owner's period of
466 ownership, whichever is less.~~; and that~~
467 4. The property owner is current on all mortgage debt on
468 the property.
469 5. The property owner agrees in writing to receive the
470 disclosure statements required by paragraph (11)(c).
471 6. The property is within the geographic boundaries of the
472 applicable qualifying improvement program.
473 7. The term of the financing agreement does not exceed:
474 a. For a single qualifying improvement, the estimated
475 useful life of the qualifying improvement.

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476 b. For multiple qualifying improvements, the lesser of:
477 (I) Thirty years; or
478 (II) The greater of either the weighted average estimated
479 useful life of all qualifying improvements being financed or the
480 estimated useful life of the qualifying improvements to which
481 the greatest portion of funds is disbursed. The local government
482 or program administrator, as applicable, shall determine the
483 useful life of a qualifying improvement using established third-
484 party standards, including certification criteria from
485 government agencies or nationally recognized standards and
486 testing organizations.
487 8. The property owner is not currently the subject of
488 bankruptcy proceedings.
489 9. The property is not subject to an existing home equity
490 conversion mortgage or a reverse mortgage product.
491 10. The property is not a residential property gifted to a
492 homeowner for free by a nonprofit entity as may be disclosed by
493 the property owner. The failure of a property owner to disclose
494 the gift does not invalidate a financing agreement or any
495 obligation thereunder.
496 11. For qualifying improvements for solar energy, the
497 property owner has obtained estimates from at least two
498 unaffiliated, competitive entities, one of which is a qualifying
499 improvement contractor, for the qualifying improvement to be
500 financed. This requirement may be waived by the property owner

501 through a separately signed written disclosure.
502 12. The local government or program administrator, as
503 applicable, has asked if the property owner has obtained or
504 sought to obtain additional qualifying improvements on the same
505 property which have not yet been recorded. The failure of a
506 property owner to disclose such information does not invalidate
507 a financing agreement or any obligation thereunder, even if the
508 total financed amount of the qualifying improvement exceeds the
509 amount that would otherwise be authorized under paragraph
510 (15)(a). The existence of a prior qualifying improvement non-ad
511 valorem assessment or a prior financing agreement is not
512 evidence that the financing agreement under consideration is
513 affordable or meets other program requirements.
514 (b) A financing agreement for a commercial property may
515 not be approved unless the local government, or the program
516 administrator acting on its behalf, determines, based on a
517 review of public records derived from a commercially accepted
518 source and the statements and records of the property owner,
519 that all of the following conditions have been met:
520 1. All property taxes and any other assessments levied on
521 the same bill as the property taxes are current.
522 2. There are no involuntary liens greater than $10,000,
523 including, but not limited to, construction liens, on the
524 property.
525 3. Notices of default or other evidence of property-based

526 debt delinquency have not been recorded and have not been
527 released during the preceding 3 years or the property owner's
528 period of ownership, whichever is less.
529 4. The property owner is current on all mortgage debt on
530 the property.
531 (10) In addition to reviewing public records derived from
532 a commercially accepted source, the statements and records of
533 the residential property owner, or the residential property
534 owner's credit reports, and before a local government or program
535 administrator, as applicable, approves the financing of a
536 qualifying improvement on residential property, the local
537 government or program administrator must use information
538 contained in the property owner's application, commercially
539 accepted third-party records, or an automated verification
540 system to determine whether the property owner has the ability
541 to pay the annual non-ad valorem assessment for the qualifying
542 improvement. The local government or program administrator, as
543 applicable, must review the property owner's household income.
544 To do so, the program administrator shall, at a minimum, use the
545 requirements specified in paragraph (9)(a), confirm that the
546 property owner is not in bankruptcy, and determine that the
547 total estimated annual payment amount for all financing
548 agreements funded under this section on the property does not
549 exceed 10 percent of the property owner's annual household
550 income. In reviewing the property owner's ability to pay, the

551 local government or program administrator, as applicable, when
552 determining the household income:
553 (a) May include the income of any persons who reside on
554 the property but who are not property owners;
555 (b) May consider statements by the property owner
556 regarding the property owner's income, but income may not be
557 confirmed solely by such statements;
558 (c) May not consider the equity in the property that will
559 secure the non-ad valorem assessment; and
560 (d) May confirm income by use of any of the following:
561 1. Information or income models gathered from and prepared
562 by reputable third parties which provide commercially acceptable
563 evidence of the property owner's household income.
564 2. Federal and state tax returns.
565 3. Statements prepared by a certified public accountant.
566 4. Bank statements.
567 5. Credit reports.
568 6. Retirement accounts.
569 7. Social security statements.
570 8. Trust documents.
571 9. Any other reputable sources of financial information.
572 (e) If a court or tribunal determines, by clear and
573 convincing evidence, that the program administrator's
574 determination of the property owner's ability to pay was not
575 objectively reasonable based on the information provided by the

576 property owner, the annual assessment payment must be reduced by
577 an amount that is within the property owner's ability to pay.
578 This paragraph does not require or authorize the administrator
579 to reduce the amount owed on the assessment.
580 (f) The failure of a property owner to disclose public
581 records, statements, or a credit report does not invalidate a
582 financing agreement or any obligation thereunder, even if the
583 total estimated annual payment amount exceeds the amount that
584 would otherwise be authorized under this subsection.
585 (g) In determining the property owner's ability to pay the
586 estimated annual assessment amount, when either annual household
587 income is not applicable to a commercial property specified in
588 subsection (25) or the ownership of residential property is
589 vested in a corporate entity or form, if the estimated amount of
590 financing is less than $750,000, the local government or program
591 administrator, as applicable, must use generally accepted
592 underwriting criteria for businesses.
593 (11) Each local government or program administrator that
594 offers a qualifying improvement program for residential
595 properties shall:
596 (a) Develop a written disclosure form, which may be
597 presented in electronic format, which must be provided to a
598 residential property owner before he or she executes the
599 financing agreement and which contains the key terms of the
600 agreement, including:

601 1. A description of the qualifying improvement;
602 2. The estimated total financed amount, including the
603 itemized cost of the qualifying improvement, ancillary work,
604 program fees, and prepaid interest, if any;
605 3. The annual non-ad valorem assessment process and
606 estimated annual payment schedule;
607 4. The estimated amount of the annual non-ad valorem
608 assessment;
609 5. The term of the total financed amount;
610 6. The interest rate for the financed amount;
611 7. The estimated annual percentage rate;
612 8. The total estimated annual costs that the residential
613 property owner will be required to pay under the assessment
614 contract, including program fees;
615 9. The total estimated average monthly equivalent amount
616 of funds that the residential property owner would have to save
617 in order to pay the annual costs of the non-ad valorem
618 assessment, including program fees; and
619 10. The estimated due date of the residential property
620 owner's first property tax payment that includes the non-ad
621 valorem assessment.
622 (b) When a change order or proposed change order on a
623 project significantly increases the cost of the original project
624 or significantly expands the scope of the original project,
625 notify the property owner, confirm the change with the property

626 owner, and provide an updated written disclosure form as
627 described in paragraph (a) to the property owner.
628 (c) Include the following statements verbatim and in the
629 following order in the written disclosure form, each of which
630 must be individually agreed to in writing by the property owner:
631 1. "I understand that if I sell or refinance the property,
632 I may be required to pay off the outstanding financed amount as
633 a condition of the sale or the refinance of the property." This
634 statement must be in at least 24-point boldfaced type.
635 2. "I understand that the annual non-ad valorem assessment
636 will be paid when property taxes are paid and will result in a
637 lien being placed on my property."
638 3. "I understand that the annual non-ad valorem assessment
639 will be added to my property tax bill and that if I pay my
640 property taxes through my mortgage payment using an escrow
641 account, I must notify my mortgage lender."
642 4. "I understand that if I fail to pay the annual non-ad
643 valorem assessment, I may incur penalties and fees and the local
644 government may issue a tax certificate that might result in the
645 loss of my property."
646 5. "I understand that any potential utility or insurance
647 savings are not guaranteed and will not reduce the annual non-ad
648 valorem assessment or total assessment amount."
649 6. "I understand that I have 5 days to cancel the
650 financing agreement and that this 5-day period expires at

651 midnight on the 5th business day after I sign the agreement."
652 7. "I understand that the local government, program
653 administrator, or qualifying improvement contractor does not
654 provide tax advice and that I should seek professional tax
655 advice if I have questions regarding tax credits, tax
656 deductibility, or other tax impacts of the qualifying
657 improvement or the assessment contract."
658 8. "I understand that I cannot be assessed a penalty if I
659 prepay the outstanding financed amount."
660 (d) Provide a printed or electronic cancellation form to
661 the residential property owner no later than the date that the
662 property owner signs the financing agreement. The cancellation
663 form must allow the property owner to cancel the contract within
664 the 5-day period specified in subparagraph (c)6.
665 (e) Before a notice to proceed is issued, conduct, with at
666 least one residential property owner or an individual who is not
667 affiliated or associated with the local government, program
668 administrator, or qualifying improvement contractor and who is
669 legally authorized to act on behalf of the property owner, an
670 oral, recorded telephone call, during which the local government
671 or program administrator must use plain language. The local
672 government or program administrator, as applicable, shall ask
673 the residential property owner or authorized representative if
674 he or she would like to communicate primarily in a language
675 other than English. A local government or program administrator,

676 as applicable, may not leave a voicemail for the residential
677 property owner or authorized representative to satisfy this
678 requirement. A local government or program administrator, as
679 applicable, as part of this telephone call, must confirm with
680 the residential property owner or authorized representative all
681 of the following:
682 1. That at least one residential property owner has access
683 to a copy of the financing agreement and financing estimates and
684 disclosures.
685 2. The qualifying improvement that is being financed.
686 3. The total estimated annual costs that the residential
687 property owner will have to pay under the financing agreement,
688 including program fees.
689 4. The total estimated average monthly equivalent amount
690 of funds that the residential property owner would have to save
691 in order to pay the annual costs of the non-ad valorem
692 assessment, including program fees.
693 5. The estimated due date of the residential property
694 owner's first property tax payment that includes the non-ad
695 valorem assessment.
696 6. The term of the financing agreement.
697 7. That payments for the financing agreement will cause
698 the residential property owner's annual tax bill to increase and
699 that payments will be made through an additional annual non-ad
700 valorem assessment on the property and will be paid either

701 directly to the county tax collector's office as part of the
702 total annual secured property tax bill or may be paid through
703 the residential property owner's mortgage escrow account.
704 8. That the qualifying residential property owner has
705 disclosed whether he or she has received or is seeking
706 additional non-ad valorem assessments and has disclosed all
707 other assessments or special taxes that are or are projected to
708 be placed on the property.
709 9. That the property will be subject to a lien during the
710 term of the financing agreement and that the obligations under
711 the agreement may be required to be paid in full before the
712 residential property owner sells or refinances the property.
713 10. That any potential utility or insurance savings are
714 not guaranteed and will not reduce the annual non-ad valorem
715 assessment or total assessment amount.
716 11. That the local government, program administrator, or
717 qualifying improvement contractor does not provide tax advice
718 and that the residential property owner should seek professional
719 tax advice if he or she has questions regarding tax credits, tax
720 deductibility, or other tax impacts of the qualifying
721 improvement or the financing agreement.
722 (12)(a) A residential property owner may cancel a
723 financing agreement within 5 business days after signing the
724 financing agreement without being assessed a financial penalty
725 by the local government or program administrator, as applicable.

726 (b) A contract to sell or install a qualifying improvement
727 that is related to an application for financing in a qualifying
728 improvement program for a residential property is unenforceable,
729 and a qualifying improvement contractor may not begin work under
730 such a contract, if the property owner applied for, accepted,
731 and canceled a qualifying improvement financing agreement within
732 the 5-business-day right-to-cancel period set forth in paragraph
733 (a).
734 (c) If a qualifying improvement contractor has initiated
735 work on a residential property under a contract deemed
736 unenforceable under this subsection, the qualifying improvement
737 contractor:
738 1. May not receive compensation for that work under the
739 financing agreement.
740 2. Must restore the property to its original condition at
741 no cost to the property owner.
742 3. Must immediately return any money, property, and other
743 consideration given by the property owner. If the property owner
744 provided any property and the qualifying improvement contractor
745 does not or cannot return it, the qualifying improvement
746 contractor must immediately return the fair market value of the
747 property or its value as designated in the contract, whichever
748 is greater.
749 (d) If the qualifying improvement contractor has delivered
750 chattel or fixtures to the residential property pursuant to a

751 contract deemed unenforceable under this subsection, the
752 qualifying improvement contractor has 90 days after the date on
753 which the contract was executed to retrieve the chattel or
754 fixtures, provided that:
755 1. The qualifying improvement contractor has fulfilled the
756 requirements of subparagraphs (c)2. and 3.
757 2. The chattel and fixtures can be removed at the
758 qualifying improvement contractor's expense without damaging the
759 property owner's property.
760 (e) If a qualifying improvement contractor fails to comply
761 with this subsection, the residential property owner may retain
762 any chattel or fixtures provided pursuant to a contract deemed
763 unenforceable under this subsection.
764 (f) A contract that is otherwise unenforceable under this
765 subsection remains enforceable if the residential property owner
766 waives his or her right to cancel the contract or cancels the
767 financing agreement under paragraph (a) but allows the
768 qualifying improvement contractor to proceed with the
769 installation of the qualifying improvement.
770 (13) ~~(10)~~ To constitute an improvement to a building or
771 facility, a qualifying improvement must ~~shall~~ be affixed to a
772 building or facility that is part of the property ~~and shall~~
773 ~~constitute an improvement to the building or facility~~ or a
774 fixture attached to the building or facility.
775 (a) A financing ~~An~~ agreement between a local government

776 and a residential ~~qualifying~~ property owner may not cover wind-
777 resistance improvements in buildings or facilities under new
778 construction or construction for which a certificate of
779 occupancy or similar evidence of substantial completion of new
780 construction or improvement has not been issued.
781 (b) A financing agreement may be executed for qualifying
782 improvements in the construction of a commercial property before
783 a certificate of occupancy or similar evidence of substantial
784 completion of new construction or improvement is issued.
785 Progress payments, or payments made before completion, are
786 allowed for commercial properties, provided that the property
787 owner subsequently provides, upon request for a final progress
788 payment disbursement, written verification to the local
789 government confirming that the qualifying improvements are
790 completed and operating as intended. A financing agreement with
791 a commercial property owner may cover resiliency improvements in
792 buildings or facilities under new construction or construction
793 for which a certificate of occupancy or similar evidence of
794 substantial completion of new construction or improvement has
795 not been issued.
796 (14) ~~(11)~~ Any work requiring a license under any applicable
797 law to make a qualifying improvement must ~~shall~~ be performed by
798 a contractor properly certified or registered pursuant to ~~part I~~
799 ~~or part II of~~ chapter 489.
800 (15)(a) ~~(12)(a)~~ Without the consent of the holders or loan

801 servicers of any mortgage encumbering or otherwise secured by
802 the residential property:~~,~~
803 1. The total amount of any non-ad valorem assessment for a
804 residential property under this section may not exceed 20
805 percent of the fair market ~~just~~ value of the property ~~as~~
806 ~~determined by the county property appraiser~~.
807 2. The combined mortgage-related debt and total amount of
808 any non-ad valorem assessments funded under this section for
809 residential property may not exceed 97 percent of the fair
810 market value of the residential property. The failure of a
811 property owner to disclose information set forth in paragraph
812 (9)(a) does not invalidate a financing agreement or any
813 obligation thereunder, even if the total financed amount of the
814 qualifying improvements exceeds the amount that would otherwise
815 be authorized under this paragraph. For purposes of this
816 paragraph, fair market value may be determined using third-party
817 valuations based on reputable methodologies.
818 (b) Before entering into a financing agreement with the
819 owner of a commercial property, except those commercial
820 properties specified in subsection (25), the local government or
821 program administrator, as applicable, must have received the
822 written consent of the current holders or loan servicers of any
823 mortgage that encumbers or is otherwise secured by the property
824 or that will otherwise be secured by the property at the time
825 the financing agreement is executed by the local government or

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826 program administrator ~~notwithstanding paragraph (a), a non-ad~~
827 ~~valorem assessment for a qualifying improvement defined in~~
828 ~~subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported~~
829 ~~by an energy audit is not subject to the limits in this~~
830 ~~subsection if the audit demonstrates that the annual energy~~
831 ~~savings from the qualified improvement equals or exceeds the~~
832 ~~annual repayment amount of the non-ad valorem assessment~~.
833 (16) ~~(13)~~ At least 30 days before entering into a financing
834 agreement, the property owner shall provide to the holders or
835 loan servicers of any existing mortgages encumbering or
836 otherwise secured by the property a written notice of the
837 owner's intent to enter into a financing agreement together with
838 the maximum principal amount to be financed and the maximum
839 annual assessment necessary to repay that amount. A verified
840 copy or other proof of such notice must ~~shall~~ be provided to the
841 local government or program administrator, as applicable. A
842 provision in any agreement between a mortgagee or other
843 lienholder and a property owner, or otherwise now or hereafter
844 binding upon a property owner, which allows for acceleration of
845 payment of the mortgage, note, or lien or other unilateral
846 modification solely as a result of entering into a financing
847 agreement as provided for in this section is not enforceable.
848 This subsection does not limit the authority of the holder or
849 loan servicer to increase the required monthly escrow by an
850 amount necessary to ~~annually~~ pay the annual ~~qualifying~~

851 ~~improvement~~ assessment.

852 (17) ~~(14)~~ At or before the time a seller ~~purchaser~~ executes
853 a contract for the sale ~~and purchase~~ of any property for which a
854 non-ad valorem assessment has been levied under this section and
855 has an unpaid balance due, the seller shall give the prospective
856 purchaser a written disclosure statement in the following form,
857 which must ~~shall~~ be set forth in the contract or in a separate
858 writing. ~~:~~

859 (a) For residential property:

860

861 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE
862 ENERGY, ADVANCED TECHNOLOGIES FOR WASTEWATER REMOVAL, OR WIND
863 RESISTANCE.—The property being purchased is located within the
864 jurisdiction of a local government that has placed an assessment
865 on the property pursuant to s. 163.08, Florida Statutes. The
866 assessment is for a qualifying improvement to the property
867 relating to energy efficiency, renewable energy, advanced
868 technologies for wastewater removal, or wind resistance, and is
869 not based on the value of the property. You are encouraged to
870 contact the county property appraiser's office to learn more
871 about this and other assessments that may be provided by law.

872 (b) For a commercial property:

873

874 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE
875 ENERGY, OR RESILIENCY.—The property being purchased is located

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876 within the jurisdiction of a local government that has placed an
877 assessment on the property pursuant to s. 163.08, Florida
878 Statutes. The assessment is for a qualifying improvement to the
879 property relating to energy efficiency, renewable energy, or
880 resiliency, and is not based on the value of the property. You
881 are encouraged to contact the county property appraiser's office
882 to learn more about this and other assessments that may be
883 provided for by law.
884
885 (18) A financing agreement authorized under this section
886 on residential property may not include any of the following:
887 (a) A negative amortization schedule. Capitalized interest
888 included in the original balance of the financing agreement does
889 not constitute negative amortization.
890 (b) A balloon payment.
891 (c) Prepayment fees, other than nominal administrative
892 costs.
893 (19) For residential property, a local government or
894 program administrator:
895 (a) May not enroll a qualifying improvement contractor who
896 contracts with residential property owners to install qualifying
897 improvements unless:
898 1. The local government or program administrator, as
899 applicable, determines that the qualifying improvement
900 contractor maintains in good standing an appropriate license

901 from the state, if applicable, as well as any other permits,
902 licenses, or registrations required for engaging in its business
903 in the jurisdiction in which it operates and maintains all
904 state-required bond and insurance coverage.
905 2. The local government or program administrator, as
906 applicable, obtains the qualifying improvement contractor's
907 written agreement that the qualifying improvement contractor
908 will comply with all applicable laws, including applicable
909 advertising and marketing laws and rules and the requirements of
910 this section.
911 (b) Must maintain a process to enroll new qualifying
912 improvement contractors which includes review of the following
913 for each contractor:
914 1. Relevant work or project history.
915 2. Financial and reputational background checks.
916 3. The contractor's status on the Better Business Bureau
917 platform or other online platform that tracks contractor
918 reviews.
919 (c) Must establish and maintain a process for monitoring
920 qualifying improvement contractors with regard to performance
921 and compliance with program policies and must implement policies
922 for suspending, reinstating, and terminating qualifying
923 improvement contractors based on violations of program policies
924 or unscrupulous behavior. A program administrator, either
925 directly or through an affiliate, may not be enrolled as a

926 qualifying improvement contractor.
927 (20)(a) Before disbursing final funds to a qualifying
928 improvement contractor for a qualifying improvement on
929 residential property, the local government or program
930 administrator, as applicable, must confirm that the applicable
931 work or service has been completed or that the final permit for
932 the qualifying improvement has been closed with all permit
933 requirements satisfied.
934 (b) A local government or program administrator, as
935 applicable, may not disclose the maximum financing amount for
936 which a residential property owner is eligible to a qualifying
937 improvement contractor or to a third party engaged in soliciting
938 financing agreements financed pursuant to this section.
939 (21) When communicating with residential property owners,
940 a local government, program administrator, or qualifying
941 improvement contractor may not:
942 (a) Suggest or imply:
943 1. That a non-ad valorem assessment authorized under this
944 section is a government assistance program;
945 2. That qualifying improvements are free or provided at no
946 cost, or that the financing related to a non-ad valorem
947 assessment authorized under this section is free or provided at
948 no cost; or
949 3. That the financing of a qualifying improvement using
950 the program authorized pursuant to this section does not require

951 the property owner to repay the financial obligation.
952 (b) Make any representation as to the tax deductibility of
953 a non-ad valorem assessment on residential property. A local
954 government, program administrator, or qualifying improvement
955 contractor, or a third party engaged in marketing on behalf of
956 such entities, may encourage a property owner to seek the advice
957 of a tax professional regarding tax matters related to
958 assessments.
959 (22)(a) A qualifying improvement contractor may not
960 advertise the availability of financing agreements for, or
961 solicit residential property owners on behalf of, the local
962 government or program administrator unless:
963 1. The qualifying improvement contractor maintains the
964 appropriate registration or certification from the Construction
965 Industry Licensing Board or any other permit, license, or
966 registration required to conduct business in the jurisdiction in
967 which it operates, and provides proof of having the required
968 bond and insurance coverage amounts.
969 2. The local government or program administrator, as
970 applicable, obtains the qualifying improvement contractor's
971 written agreement that the qualifying improvement contractor
972 will comply with applicable laws and rules and qualifying
973 improvement program policies and procedures, including those on
974 advertising and marketing.
975 (b) A local government or program administrator may not

976 provide any payment, fee, or kickback to a qualifying
977 improvement contractor for referring financing business relating
978 to a specific financing agreement on a residential property.
979 However, a local government or program administrator may provide
980 information or services to a qualifying improvement contractor
981 to facilitate the installation of a qualifying improvement for a
982 property owner.
983 (c) A local government or program administrator may
984 reimburse a qualifying improvement contractor or third party for
985 its expenses in advertising and marketing campaigns and
986 materials.
987 (d) A local government or program administrator may not
988 provide to a qualifying improvement contractor any information
989 that discloses the amount of funds for which a property owner is
990 eligible for qualifying improvements or the amount of equity in
991 a property.
992 (e) For residential properties, a qualifying improvement
993 contractor may not provide a different price for a qualifying
994 improvement financed under this section than the price that the
995 qualifying improvement contractor would otherwise provide if the
996 qualifying improvement was not being financed through an
997 assessment financing agreement.
998 (f) A local government or program administrator may not
999 provide any direct cash payment or other thing of material value
1000 to a residential property owner which is explicitly conditioned

1001 upon the property owner entering into a financing agreement.
1002 However, a local government or program administrator may offer
1003 programs or promotions that provide reduced fees or interest
1004 rates if the reduced fees or interest rates are reflected in the
1005 financing agreements and are not provided to the property owners
1006 as cash consideration.
1007 (g) A local government or program administrator must
1008 conduct regular reviews of qualifying improvement contractors to
1009 confirm ongoing compliance with this subsection. If the local
1010 government or program administrator determines that there is a
1011 substantial violation by a qualifying improvement contractor,
1012 the local government or program administrator must provide the
1013 contractor with notice of the violation and place the contractor
1014 in a probationary program.
1015 (23) Each local government and program administrator must
1016 develop and implement policies and procedures for responding to,
1017 tracking, and resolving questions and complaints about its
1018 qualifying improvement program for residential properties.
1019 (24) Each local government that has authorized a
1020 qualifying improvement program for residential properties shall
1021 post on its website an annual report for the period ending
1022 December 31 each year containing the following information:
1023 (a) The number of qualifying improvements funded.
1024 (b) The aggregate, average, and median dollar amounts of
1025 annual non-ad valorem assessments and the total number of non-ad

1026 valorem assessments that funded qualifying improvements.
1027 (c) The percentage, number, and dollar value of non-ad
1028 valorem assessments that funded qualifying improvements,
1029 aggregated by the following category types: energy efficiency,
1030 renewable energy, wind resistance, residential property
1031 wastewater, commercial property resiliency, and other commercial
1032 property qualifying improvements.
1033 (d) The number of defaulted non-ad valorem assessments,
1034 including the total number and defaulted amount, the number and
1035 dates of missed payments, the total number of parcels in default
1036 and the years in default, and the percentage of defaults by
1037 total assessments.
1038 (e) A summary of all reported complaints received by the
1039 local government and its program administrators related to
1040 authorized qualifying improvements programs, including the
1041 resolution of each complaint.
1042 (f) The estimated number of jobs created.
1043 (g) The number and percentage of homeowners 60 years of
1044 age or older participating in a qualifying improvement program.
1045 This report must be posted no later than April 1 of the year
1046 following the calendar year covered by the report.
1047 (25) Each local government or program administrator that
1048 offers a qualifying improvement program for residential
1049 properties may finance qualifying improvements on commercial
1050 property if the estimated amount of financing on the commercial

1051 property does not exceed $750,000, subject to paragraph (10)(g).
1052 ~~(15) A provision in any agreement between a local~~
1053 ~~government and a public or private power or energy provider or~~
1054 ~~other utility provider is not enforceable to limit or prohibit~~
1055 ~~any local government from exercising its authority under this~~
1056 ~~section.~~
1057 ~~(16) This section is additional and supplemental to county~~
1058 ~~and municipal home rule authority and not in derogation of such~~
1059 ~~authority or a limitation upon such authority.~~
1060 Section 2. This act shall take effect July 1, 2024.

Energy, Communications & Cybersecurity Subcommittee
HB 927 by Rep. Trabulsy
Improvements to Real Property

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Trabulsy (Strike-All):

- Restructures the bill to match the structure of the Senate companion bill.
- Modifies definitions.
- Modifies the list of improvements that may be financed under a qualifying improvement program (QIP).
- Modifies underwriting requirements for participation in a QIP.
- Modifies required disclosures to property owners under a QIP.
- Removes provisions that allow for certain commercial property owners to participate in residential QIPs.
- Provides residential property owners with a 3 business day right to cancel a financing agreement under a QIP.
- Modifies the method for determining property value for purposes of calculating the maximum non-ad valorem assessment for residential properties.
- Modifies provisions related to contractors making qualified improvements under a QIP.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Committee/Subcommittee hearing bill: Energy, Communications &
2 Cybersecurity Subcommittee
3 Representative Trabulsy offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 163.08, Florida Statutes, is amended to
8 read:
9 (Substantial rewording of section. See s. 163.08, F.S., for
10 present text.)
11 163.08 Definitions.—As used in ss. 163.081-163.087, the
12 term:
13 (1) "Commercial property" means real property other than
14 residential property. The term includes, but is not limited to,
15 a property zoned multifamily residential which is composed of
16 five or more dwelling units; a long-term care or assisted living

17 facility; real property owned by a nonprofit; government
18 commercial property; and real property used for commercial,
19 industrial, or agricultural purposes.
20 (2) "Government commercial property" means real property
21 owned by a local government and leased to a nongovernmental
22 lessee for commercial use. The term does not include residential
23 property.
24 (3) "Nongovernmental lessee" means a person or an entity
25 other than a local government which leases government commercial
26 property.
27 (4) "Program administrator" means a county, a
28 municipality, a dependent special district as defined in s.
29 189.012, or a separate legal entity created pursuant to s.
30 163.01(7).
31 (5) "Property owner" means the owner or owners of record
32 of real property. The term includes real property held in trust
33 for the benefit of one or more individuals, in which case the
34 individual or individuals may be considered as the property
35 owner or owners, provided that the trustee provides written
36 consent. The term does not include persons renting, using,
37 living, or otherwise occupying real property, except for a
38 nongovernmental lessee.
39 (6) "Qualifying improvement" means the following permanent
40 improvements located on real property within the jurisdiction of
41 an authorized financing program:

42 (a) For improvements on residential property:
43 1. Repairing, replacing, or improving a central sewerage
44 system, converting an onsite sewage treatment and disposal
45 system to a central sewerage system, or, if no central sewerage
46 system is available, removing, repairing, replacing, or
47 improving an onsite sewage treatment and disposal system to an
48 advanced system or technology.
49 2. Repairing, replacing, or improving a roof, including
50 improvements that strengthen the roof deck attachment; create a
51 secondary water barrier to prevent water intrusion; install
52 wind-resistant shingles or gable-end bracing; or reinforce roof-
53 to-wall connections.
54 3. Replacing windows or doors, including garage doors,
55 with energy-efficient windows or doors.
56 4. Installing energy-efficient heating, cooling, or
57 ventilation systems.
58 5. Replacing or installing insulation.
59 6. Replacing or installing energy-efficient water heaters.
60 (b) For installing or constructing improvements on
61 commercial property:
62 1. Waste system improvements, which consists of repairing,
63 replacing, improving, or constructing a central sewerage system,
64 converting an onsite sewage treatment and disposal system to a
65 central sewerage system, or, if no central sewerage system is
66 available, removing, repairing, replacing, or improving an

67 onsite sewage treatment and disposal system to an advanced
68 system or technology.
69 2. Making resiliency improvements, which includes but is
70 not limited to:
71 a. Repairing, replacing, improving, or constructing a
72 roof, including improvements that strengthen the roof deck
73 attachment;
74 b. Creating a secondary water barrier to prevent water
75 intrusion;
76 c. Installing wind-resistant shingles or gable-end
77 bracing; or
78 d. Reinforcing roof-to-wall connections.
79 e. Providing flood and water damage mitigation and
80 resiliency improvements, prioritizing repairs, replacement, or
81 improvements that qualify for reductions in flood insurance
82 premiums, including raising a structure above the base flood
83 elevation to reduce flood damage; creating or improving
84 stormwater and flood resiliency, including flood diversion
85 apparatus, drainage gates, or shoreline improvements; purchasing
86 flood-damage-resistant building materials; or making any other
87 improvements necessary to achieve a sustainable building rating
88 or compliance with a national model resiliency standard and any
89 improvements to a structure to achieve wind or flood insurance
90 rate reductions, including building elevation.

91 3. Energy conservation and efficiency improvements, which
92 are measures to reduce consumption through efficient use or
93 conservation of electricity, natural gas, propane, or other
94 formers of energy, including but not limited to, air sealing;
95 installation of insulation; installation of energy-efficient
96 heating, cooling, or ventilation systems; building modification
97 to increase the use of daylight; window replacement; windows;
98 energy controls or energy recovery systems; installation of
99 electric vehicle charging equipment; installation of efficient
100 lighting equipment; or any other improvements necessary to
101 achieve a sustainable building rating or compliance with a
102 national model green building code.
103 4. Renewable energy improvements, which is the
104 installation of any system in which the electrical, mechanical,
105 or thermal energy is produced from a method that uses solar,
106 geothermal, bioenergy, wind, or hydrogen.
107 5. Water conservation efficiency improvements, which are
108 measures to reduce consumption through efficient use or
109 conservation of water.
110 (7) "Qualifying improvement contractor" means a licensed
111 or registered contractor who has been registered to participate
112 by a program administrator pursuant to s. 163.083 to install or
113 otherwise perform work to make qualifying improvements on
114 residential property financed pursuant to a program authorized
115 under s. 163.081.

116 (8) "Residential property" means real property zoned as
117 residential or multifamily residential and composed of four or
118 fewer dwelling units.
119 Section 2. Section 163.081, Florida Statutes, is created
120 to read:
121 163.081 Financing qualifying improvements to residential
122 property.—
123 (1) RESIDENTIAL PROPERTY PROGRAM AUTHORIZATION.—
124 (a) Subject to local government ordinance or resolution, a
125 residential property owner may apply to a program administrator
126 for funding to finance a qualifying improvement and enter into a
127 financing agreement with the program administrator. An
128 authorized program to fund qualifying improvements must, at a
129 minimum, meet the requirements of this section. Pursuant to this
130 section or as otherwise provided by law or pursuant to a
131 county's or municipality's home rule power, a local government
132 may enter into a partnership with one or more local governments
133 for the purpose of providing and financing qualifying
134 improvements. A program administrator may contract with one or
135 more third-party administrators to implement the program as
136 provided in s. 163.084.
137 (b) An authorized program administrator may levy non-ad
138 valorem assessments to facilitate repayment of financing
139 qualifying improvements. Costs incurred by the program
140 administrator for such purpose may be collected as a non-ad

141 valorem assessment. A non-ad valorem assessment shall be
142 collected pursuant to s. 197.3632 and, notwithstanding s.
143 197.3632(8)(a), shall not be subject to discount for early
144 payment. However, the notice and adoption requirements of s.
145 197.3632(4) do not apply if this section is used and complied
146 with, and the intent resolution, publication of notice, and
147 mailed notices to the property appraiser, tax collector, and
148 Department of Revenue required by s. 197.3632(3)(a) may be
149 provided on or before August 15 of each year in conjunction with
150 any non-ad valorem assessment authorized by this section, if the
151 property appraiser, tax collector, and program administrator
152 agree.
153 (c) A program administrator may incur debt for the purpose
154 of providing financing for qualifying improvements, which debt
155 is payable from revenues received from the improved property or
156 any other available revenue source authorized by law.
157 (2) APPLICATION.—The owner of record of the residential
158 property may apply to the authorized program administrator to
159 finance a qualifying improvement. The program administrator may
160 only enter into a financing agreement with the property owner.
161 (3) FINANCING AGREEMENTS.—
162 (a) Before entering into a financing agreement, the
163 program administrator must review the residential property
164 owner's public records derived from a commercially accepted

165 source and the property owner's statements, records, and credit
166 reports and make each of the following findings:
167 1. The total amount of any non-ad valorem assessment for a
168 residential property under this section does not exceed 20
169 percent of the just value of the property as determined by the
170 property appraiser. The total amount may exceed this limitation
171 upon written consent of the holders or loan servicers of any
172 mortgage encumbering or otherwise secured by the residential
173 property.
174 2. The combined mortgage-related debt and total amount of
175 any non-ad valorem assessments under the program for the
176 residential property does not exceed 97 percent of the just
177 value of the property as determined by the property appraiser.
178 3. The financing agreement does not utilize a negative
179 amortization schedule, a balloon payment, or prepayment fees or
180 fines other than nominal administrative costs. Capitalized
181 interest included in the original balance of the assessment
182 financing agreement does not constitute negative amortization.
183 4. All property taxes and any other assessments, including
184 non-ad valorem assessments, levied on the same bill as the
185 property taxes are current and have not been delinquent for the
186 preceding 3 years, or the property owner's period of ownership,
187 whichever is less.
188 5. There are no outstanding fines or fees related to
189 zoning or code enforcement violations issued by a county or

190 municipality, unless the qualifying improvement will remedy the
191 zoning or code violation.
192 6. There are no involuntary liens, including, but not
193 limited to, construction liens on the residential property.
194 7. No notices of default or other evidence of property-
195 based debt delinquency have been recorded and not released
196 during the preceding 3 years or the property owner's period of
197 ownership, whichever is less.
198 8. The property owner is current on all mortgage debt on
199 the residential property.
200 9. The property owner has not been subject to a bankruptcy
201 proceeding within the last 5 years unless it was discharged or
202 dismissed more than 2 years before the date on which the
203 property owner applied for financing.
204 10. The residential property is not subject to an existing
205 home equity conversion mortgage or reverse mortgage product.
206 11. The term of the financing agreement does not exceed
207 the weighted average useful life of the qualified improvements
208 to which the greatest portion of funds disbursed under the
209 assessment contract is attributable, not to exceed 20 years. The
210 program administrator shall determine the useful life of a
211 qualifying improvement using established standards, including
212 certification criteria from government agencies or nationally
213 recognized standards and testing organizations.

214 12. If the qualifying improvement is estimated to cost
215 $10,000 or more, the property owner has obtained estimates from
216 at least two unaffiliated, registered qualifying improvement
217 contractors for the qualifying improvement to be financed.
218 13. If the qualifying improvement is for the conversion of
219 an onsite sewage treatment and disposal system to a central
220 sewerage system, the property owner has utilized all available
221 local government funding for such conversions and is unable to
222 obtain financing for the improvement on more favorable terms
223 through a local government program designed to support such
224 conversions.
225 (b) Before entering into a financing agreement, the
226 property administrator must determine if there are any current
227 financing agreements on the residential property and if the
228 property owner has obtained or sought to obtain additional
229 qualifying improvements on the same property which have not yet
230 been recorded. The failure to disclose information related to
231 not yet recorded financing agreements does not invalidate a
232 financing agreement or any obligation thereunder, even if the
233 total financed amount of the qualifying improvement exceeds the
234 amount that would otherwise be authorized under this section.
235 The existence of a prior qualifying improvement non-ad valorem
236 assessment or a prior financing agreement is not evidence that
237 the financing agreement under consideration is affordable or
238 meets other program requirements.

239 (c) In addition, before a program administrator approves a
240 qualifying improvement under this section, the program
241 administrator must use information contained in the property
242 owner's application, reasonably reliable third-party records, or
243 an automated verification system to reasonably determine whether
244 the property owner has the ability to pay the annual non-ad
245 valorem assessment for the qualifying improvement. The program
246 administrator must review the property owner's household income,
247 housing expenses, assets, and other debt obligations. If the
248 program administrator uses an automated verification system, it
249 must be a system that can verify the property owner's income, is
250 not based on predictive or estimation methodologies, and has
251 been determined sufficient for such verification purposes by a
252 federal mortgage lending authority or regulator. In reviewing
253 the property owner's ability to pay, the program administrator:
254 1. When determining the household income, may include the
255 income of any property owner aged 18 years old or older whose
256 name is on the property title. If a person's income is
257 considered, that person's debt obligations must also be
258 considered.
259 2. May not consider the equity in the property that will
260 secure the non-ad valorem assessment.
261 3. Shall determine the property owner's debt obligations
262 using reasonably reliable third-party records, including, at a
263 minimum, one consumer credit report from an agency that meets

264 the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to
265 be reviewed include:
266 a. Secured and unsecured debt.
267 b. Housing expenses. The program administrator shall make
268 a reasonable estimate of the basic housing expenses based on the
269 number of persons in the household.
270 c. Stated alimony or child support obligations.
271 4. Shall determine whether the property owner has
272 sufficient income to pay the annual non-ad valorem assessment
273 and that he or she has sufficient residual income to meet his or
274 her household living expenses. To participate in a qualifying
275 improvement program, a residential property owner must have a
276 total debt-to-income ratio no higher than 49 percent.
277 (d) Findings satisfying paragraphs (a), (b), and (c) must
278 be documented, including supporting evidence relied upon, and
279 provided to the property owner prior to a financing agreement
280 being approved and recorded.
281 (e) A property owner and the program administrator may
282 agree to include in the financing agreement provisions for
283 allowing change orders necessary to complete the qualifying
284 improvement. Any financing agreement or contract for qualifying
285 improvements which includes such provisions must meet the
286 requirements of this paragraph. If a proposed change order on a
287 qualifying improvement will significantly increase the original
288 cost of the qualifying improvement or significantly expand the

289 scope of the qualifying improvement, before the change order may
290 be executed which would result in an increase in the amount
291 financed through the program administrator for the qualifying
292 improvement, the program administrator must notify the property
293 owner, provide an updated written disclosure form as described
294 in subsection (4) to the property owner, and obtain written
295 approval of the change from the property owner.
296 (f) A financing agreement may not be entered into if the
297 total cost of the qualifying improvement, including program fees
298 and interest, is less than $2,500.
299 (g) A financing agreement may not be entered into for
300 qualifying improvements in buildings or facilities under new
301 construction or construction for which a certificate of
302 occupancy or similar evidence of substantial completion of new
303 construction or improvement has not been issued.
304 (4) DISCLOSURES.—
305 (a) In addition to the requirements in subsection (3), a
306 financing agreement may not be approved unless the program
307 administrator first provides, including via electronic means, a
308 written financing estimate and disclosure to the property owner
309 which includes all of the following, each of which must be
310 individually acknowledged in writing by the property owner:
311 1. The estimated total amount to be financed, including
312 the total and itemized cost of the qualifying improvement,
313 program fees, and capitalized interest, if any;

314 2. The estimated annual non-ad valorem assessment;
315 3. The term of the financing agreement and the schedule
316 for the non-ad valorem assessments;
317 4. The interest charged and estimated annual percentage
318 rate;
319 5. A description of the qualifying improvement;
320 6. The total estimated annual costs that will be required
321 to be paid under the assessment contract, including program
322 fees;
323 7. The total estimated average monthly equivalent amount
324 of funds that would need to be saved in order to pay the annual
325 costs of the non-ad valorem assessment, including program fees;
326 8. The estimated due date of the first payment that
327 includes the non-ad valorem assessment;
328 9. A disclosure that the financing agreement may be
329 canceled within 3 business days after signing the financing
330 agreement without any financial penalty for doing so;
331 10. A disclosure that the property owner may repay any
332 remaining amount owed, at any time, without penalty or
333 imposition of additional prepayment fees or fines other than
334 nominal administrative costs;
335 11. A disclosure that if the property owner sells or
336 refinances the residential property, the property owner may be
337 required by a mortgage lender to pay off the full amount owed
338 under each financing agreement under this section;

339 12. A disclosure that the assessment will be collected
340 along with the property owner's property taxes, and will result
341 in a lien on the property from the date the financing agreement
342 is recorded;
343 13. A disclosure that potential utility or insurance
344 savings are not guaranteed, and will not reduce the assessment
345 amount; and
346 14. A disclosure that failure to pay the assessment may
347 result in penalties, fees, including attorney fees, court costs,
348 and the issuance of a tax certificate that could result in the
349 property owner losing the property and a judgment against the
350 property owner, and may affect the property owner's credit
351 rating.
352 (b) Prior to the financing agreement being approved, the
353 program administrator must conduct an oral, recorded telephone
354 call with the property owner during which the program
355 administrator must confirm each finding or disclosure required
356 in subsection (3) and this section.
357 (5) NOTICE TO LIENHOLDERS AND SERVICERS.—At least 30 days
358 before entering into a financing agreement, the property owner
359 must provide to the holders or loan servicers of any existing
360 mortgages encumbering or otherwise secured by the residential
361 property a written notice of the owner's intent to enter into a
362 financing agreement together with the maximum amount to be
363 financed, including the amount of any fees and interest, and the

364 maximum annual assessment necessary to repay the total. A
365 verified copy or other proof of such notice must be provided to
366 the program administrator. A provision in any agreement between
367 a mortgagor or other lienholder and a property owner, or
368 otherwise now or hereafter binding upon a property owner, which
369 allows for acceleration of payment of the mortgage, note, or
370 lien or other unilateral modification solely as a result of
371 entering into a financing agreement as provided for in this
372 section is unenforceable. This subsection does not limit the
373 authority of the holder or loan servicer to increase the
374 required monthly escrow by an amount necessary to pay the annual
375 assessment.
376 (6) CANCELLATION.—A property owner may cancel a financing
377 agreement on a form established by the program administrator
378 within 3 business days after signing the financing agreement
379 without any financial penalty for doing so.
380 (7) RECORDING.—Any financing agreement approved and
381 entered into pursuant to this section, or a summary memorandum
382 of such agreement, shall be submitted for recording in the
383 public records of the county within which the residential
384 property is located by the program administrator within 10
385 business days after execution of the agreement. The recorded
386 agreement must provide constructive notice that the non-ad
387 valorem assessment to be levied on the property constitutes a
388 lien of equal dignity to county taxes and assessments from the

389 date of recordation. A notice of lien for the full amount of the
390 financing may be recorded in the public records of the county
391 where the property is located. Such lien is not enforceable in a
392 manner that results in the acceleration of the remaining
393 nondelinquent unpaid balance under the assessment financing
394 agreement.
395 (8) SALE OF RESIDENTIAL PROPERTY.—At or before the time a
396 seller executes a contract for the sale of any residential
397 property for which a non-ad valorem assessment has been levied
398 under this section and has an unpaid balance due, the seller
399 shall give the prospective purchaser a written disclosure
400 statement in the following form, which must be set forth in the
401 contract or in a separate writing:
402
403 QUALIFYING IMPROVEMENTS.—The property being purchased
404 is subject to an assessment on the property pursuant
405 to s. 163.081, Florida Statutes. The assessment is for
406 a qualifying improvement to the property and is not
407 based on the value of the property. You are encouraged
408 to contact the property appraiser's office to learn
409 more about this and other assessments that may be
410 provided by law.
411
412 (9) DISBURSEMENTS.—Before disbursing final funds to a
413 qualifying improvement contractor for a qualifying improvement

414 on residential property, the program administrator shall confirm
415 that the applicable work or service has been completed or, as
416 applicable, that the final permit for the qualifying improvement
417 has been closed with all permit requirements satisfied or a
418 certificate of occupancy or similar evidence of substantial
419 completion of construction or improvement has been issued.
420 (10) CONSTRUCTION.—This section is additional and
421 supplemental to county and municipal home rule authority and not
422 in derogation of such authority or a limitation upon such
423 authority.
424 Section 3. Section 163.082, Florida Statutes, is created
425 to read:
426 163.082 Financing qualifying improvements to commercial
427 property.—
428 (1) COMMERCIAL PROPERTY PROGRAM AUTHORIZATION.—
429 (a) Subject to local government ordinance or resolution, a
430 commercial property owner may apply to a program administrator
431 for funding to finance a qualifying improvement and enter into a
432 financing agreement with the program administrator. An
433 authorized program to fund qualifying improvements must, at a
434 minimum, meet the requirements of this section. Pursuant to this
435 section or as otherwise provided by law or pursuant to a
436 county's or municipality's home rule power, a local government
437 may enter into a partnership with one or more local governments
438 for the purpose of providing and financing qualifying

439 improvements. A program administrator may contract with one or
440 more third-party administrators to implement the program as
441 provided in s. 163.084.
442 (b) An authorized program administrator may levy non-ad
443 valorem assessments to facilitate repayment of financing or
444 refinancing qualifying improvements. Costs incurred by the
445 program administrator for such purpose may be collected as a
446 non-ad valorem assessment. A non-ad valorem assessment shall be
447 collected pursuant to s. 197.3632 and, notwithstanding s.
448 197.3632(8)(a), is not subject to discount for early payment.
449 However, the notice and adoption requirements of s. 197.3632(4)
450 do not apply if this section is used and complied with, and the
451 intent resolution, publication of notice, and mailed notices to
452 the property appraiser, tax collector, and Department of Revenue
453 required by s. 197.3632(3)(a) may be provided on or before
454 August 15 of each year in conjunction with any non-ad valorem
455 assessment authorized by this section, if the property
456 appraiser, tax collector, and program administrator agree.
457 Notwithstanding ss. 192.091(2)(b) and 197.3632(8)(c), F.S., a
458 non-ad valorem assessment under this section is subject to a
459 maximum annual fee of 1 percent of the annual non-ad valorem
460 assessment collected or $5,000, whichever is less.
461 (c) A program administrator may incur debt for the purpose
462 of providing financing for qualifying improvements, which debt

463 is payable from revenues received from the improved property or
464 any other available revenue source authorized by law.
465 (2) APPLICATION.—The owner of record of the commercial
466 property may apply to the program administrator to finance a
467 qualifying improvement and enter into a financing agreement with
468 the program administrator to make such improvement. The program
469 administrator may only enter into a financing agreement with a
470 property owner. However, a nongovernmental lessee may apply to
471 finance a qualifying improvement if the nongovernmental lessee
472 provides the program administrator with written consent of the
473 government lessor. Any financing agreement with the
474 nongovernmental lessee must provide that the nongovernmental
475 lessee is the only party obligated to pay the assessment.
476 (3) FINANCING AGREEMENTS.—
477 (a) Before entering into a financing agreement, the
478 program administrator must make each of the following findings
479 based on a review of public records derived from a commercially
480 accepted source and the statements, records, and credit reports
481 of the commercial property owner or nongovernmental lessee:
482 1. The combined mortgage-related debt and total amount of
483 any non-ad valorem assessments under the program for the
484 commercial property does not exceed 97 percent of the just value
485 of the property as determined by the property appraiser.

486 2. All property taxes and any other assessments, including
487 non-ad valorem assessments, levied on the same bill as the
488 property taxes are current.
489 3. There are no involuntary liens greater than $5,000,
490 including, but not limited to, construction liens on the
491 commercial property.
492 4. No notices of default or other evidence of property-
493 based debt delinquency have been recorded and not been released
494 during the preceding 3 years or the property owner's period of
495 ownership, whichever is less.
496 5. The property owner is current on all mortgage debt on
497 the commercial property.
498 6. The term of the financing agreement does not exceed the
499 weighted average useful life of the qualified improvements to
500 which the greatest portion of funds disbursed under the
501 assessment contract is attributable, not to exceed 30 years. The
502 program administrator shall determine the useful life of a
503 qualifying improvement using established standards, including
504 certification criteria from government agencies or nationally
505 recognized standards and testing organizations.
506 7. The property owner or nongovernmental lessee is not
507 currently the subject of a bankruptcy proceeding.
508 (b) Before entering into a financing agreement, the
509 program administrator shall determine if there are any current
510 financing agreements on the commercial property and whether the

511 property owner or nongovernmental lessee has obtained or sought
512 to obtain additional qualifying improvements on the same
513 property which have not yet been recorded. The failure to
514 disclose information related to not yet recorded financing
515 agreements does not invalidate a financing agreement or any
516 obligation thereunder, even if the total financed amount of the
517 qualifying improvement exceeds the amount that would otherwise
518 be authorized under this section. The existence of a prior
519 qualifying improvement non-ad valorem assessment or a prior
520 financing agreement is not evidence that the financing agreement
521 under consideration is affordable or meets other program
522 requirements.
523 (c) Findings satisfying paragraphs (a) and (b) must be
524 documented, including supporting evidence relied upon, and
525 provided to the property owner or nongovernmental lessee prior
526 to a financing agreement being approved and recorded.
527 (d) A property owner or nongovernmental lessee and the
528 program administrator may agree to include in the financing
529 agreement provisions for allowing change orders necessary to
530 complete the qualifying improvement. Any financing agreement or
531 contract for qualifying improvements which includes such
532 provisions must meet the requirements of this paragraph. If a
533 proposed change order on a qualifying improvement will
534 significantly increase the original cost of the qualifying
535 improvement or significantly expand the scope of the qualifying

536 improvement, before the change order may be executed which would
537 result in an increase in the amount financed through the program
538 administrator for the qualifying improvement, the program
539 administrator must notify the property owner or nongovernmental
540 lessee, provide an updated written disclosure form as described
541 in subsection (4) to the property owner or nongovernmental
542 lessee, and obtain written approval of the change from the
543 property owner or nongovernmental lessee.
544 (e) A financing agreement may not be entered into if the
545 total cost of the qualifying improvement, including program fees
546 and interest, is less than $2,500.
547 (4) DISCLOSURES.—In addition to the requirements in
548 subsection (3), a financing agreement may not be approved unless
549 the program administrator provides, whether on a separate
550 document or included with other disclosures or forms, a
551 financing estimate and disclosure to the property owner or
552 nongovernmental lessee which includes all of the following:
553 (a) The estimated total amount to be financed, including
554 the total and itemized cost of the qualifying improvement,
555 program fees, and capitalized interest, if any;
556 (b) The estimated annual non-ad valorem assessment;
557 (c) The term of the financing agreement and the schedule
558 for the non-ad valorem assessments;
559 (d) The interest charged and estimated annual percentage
560 rate;

561 (e) A description of the qualifying improvement;
562 (f) The total estimated annual costs that will be required
563 to be paid under the assessment contract, including program
564 fees; and
565 (g) The estimated due date of the first payment that
566 includes the non-ad valorem assessment.
567 (5) CONSENT OF LIENHOLDERS AND SERVICERS.—Before entering
568 into a financing agreement with a property owner, the program
569 administrator must have received the written consent of the
570 current holders or loan servicers of any mortgage that encumbers
571 or is otherwise secured by the commercial property or that will
572 otherwise be secured by the property at the time the financing
573 agreement is executed.
574 (6) RECORDING.—Any financing agreement approved and
575 entered into pursuant to this section or a summary memorandum of
576 such agreement must be submitted for recording in the public
577 records of the county within which the commercial property is
578 located by the program administrator within 10 business days
579 after execution of the agreement. The recorded agreement must
580 provide constructive notice that the non-ad valorem assessment
581 to be levied on the property constitutes a lien of equal dignity
582 to county taxes and assessments from the date of recordation. A
583 notice of lien for the full amount of the financing may be
584 recorded in the public records of the county where the property
585 is located. Such lien is not enforceable in a manner that

586 results in the acceleration of the remaining nondelinquent
587 unpaid balance under the assessment financing agreement.
588 (7) SALE OF COMMERCIAL PROPERTY.—At or before the time a
589 seller executes a contract for the sale of any commercial
590 property for which a non-ad valorem assessment has been levied
591 under this section and has an unpaid balance due, the seller
592 shall give the prospective purchaser a written disclosure
593 statement in the following form, which must be set forth in the
594 contract or in a separate writing:
595
596 QUALIFYING IMPROVEMENTS.—The property being purchased
597 is subject to an assessment on the property pursuant
598 to s. 163.082, Florida Statutes. The assessment is for
599 a qualifying improvement to the property and is not
600 based on the value of the property. You are encouraged
601 to contact the property appraiser's office to learn
602 more about this and other assessments that may be
603 provided for by law.
604
605 (8) COMPLETION CERTIFICATE.—Upon disbursement of all
606 financing and completion of installation of qualifying
607 improvements financed, the program administrator shall file with
608 the applicable county or municipality a certificate that the
609 qualifying improvements have been installed and are in good
610 working order.

611 (9) CONSTRUCTION.—This section is additional and
612 supplemental to county and municipal home rule authority and not
613 in derogation of such authority or a limitation upon such
614 authority.
615 Section 4. Section 163.083, Florida Statutes, is created
616 to read:
617 163.083 Qualifying improvement contractors.—
618 (1) A county or municipality shall establish a process, or
619 approve a process established by a program administrator, to
620 register contractors for participation in a program authorized
621 by a county or municipality pursuant to s. 163.081. A qualifying
622 improvement contractor may only perform such work that the
623 contractor is appropriately licensed, registered, and permitted
624 to conduct. At the time of application to participate and during
625 participation in the program, contractors must:
626 (a) Hold all necessary licenses or registrations for the
627 work to be performed which are in good standing. Good standing
628 includes no outstanding complaints with the state or local
629 government which issues such licenses or registrations.
630 (b) Comply with all applicable federal, state, and local
631 laws and regulations, including obtaining and maintaining any
632 other permits, licenses, or registrations required for engaging
633 in business in the jurisdiction in which it operates and
634 maintaining all state-required bond and insurance coverage.

635 (c) File with the program administrator a written
636 statement in a form approved by the county or municipality that
637 the contractor will comply with applicable laws and rules and
638 qualifying improvement program policies and procedures,
639 including those on advertising and marketing.
640 (2) A third-party administrator or a program
641 administrator, either directly or through an affiliate, may not
642 be registered as a qualifying improvement contractor.
643 (3) A program administrator shall establish and maintain:
644 (a) A process to monitor qualifying improvement
645 contractors for performance and compliance with requirements of
646 the program and must conduct regular reviews of qualifying
647 improvement contractors to confirm that each qualifying
648 improvement contractor is in good standing.
649 (b) Procedures for notice and imposition of penalties upon
650 a finding of violation, which may consist of placement of the
651 qualifying improvement contractor in a probationary status that
652 places conditions for continued participation, payment of fines
653 or sanctions, suspension, or termination from participation in
654 the program.
655 (c) An easily accessible page on its website that provides
656 information on the status of registered qualifying improvement
657 contractors, including any imposed penalties, and the names of
658 any qualifying improvement contractors currently on probationary

659 status or that are suspended or terminated from participation in
660 the program.
661 Section 5. Section 163.084, Florida Statutes, is created
662 to read:
663 163.084 Third-party administrator for financing qualifying
664 improvements programs.—
665 (1)(a) A program administrator may contract with one or
666 more entities to administer a program authorized pursuant to s.
667 163.081 or s. 163.082 on behalf of and at the discretion of the
668 program administrator.
669 (b) The third-party administrator must be independent of
670 the program administrator and have no conflicts of interest
671 between managers or owners of the third-party administrator and
672 program administrator managers, owners, officials, or employees
673 with oversight over the contract. The contract must provide for
674 the entity to administer the program according to the
675 requirements of s. 163.081 or s. 163.082 and the ordinance or
676 resolution adopted by the county or municipality authorizing the
677 program. However, only the program administrator may levy or
678 administer non-ad valorem assessments.
679 (2) A program administrator may not contract with a third-
680 party administrator that, within the last 3 years, has been
681 prohibited from serving as a third-party administrator for
682 another program administrator for program or contract violations
683 or has been found by a court of competent jurisdiction to have

684 violated state or federal laws related to the administration of
685 ss. 163.081-163.086 or a similar program in another
686 jurisdiction.
687 (3) The program administrator must include in any contract
688 with the third-party administrator the right to perform annual
689 reviews of the administrator to confirm compliance with ss.
690 163.081-163.086, the ordinance or resolution adopted by the
691 county or municipality, and the contract with the program
692 administrator. If the program administrator finds that the
693 third-party administrator has committed a violation of ss.
694 163.081-163.086, the adopted ordinance or resolution, or the
695 contract with the program administrator, the program
696 administrator shall provide the third-party administrator with
697 notice of the violation and may, as set forth in the adopted
698 ordinance or resolution or the contract with the third-party
699 administrator:
700 (a) Place the third-party administrator in a probationary
701 status that places conditions for continued operations.
702 (b) Impose any fines or sanctions.
703 (c) Suspend the activity of the third-party administrator
704 for a period of time.
705 (d) Terminate the agreement with the third-party
706 administrator.
707 (4) A program administrator may terminate the agreement
708 with a third-party administrator, as set forth by the county or

709 municipality in its adopted ordinance or resolution or the
710 contract with the third-party administrator, if the program
711 administrator makes a finding that:
712 (a) The third-party administrator has violated the
713 contract with the program administrator. The contract may set
714 forth substantial violations that may result in contract
715 termination and other violations that may provide for a period
716 of time for correction before the contract may be terminated.
717 (b) The third-party administrator, or an officer, a
718 director, a manager or a managing member, or a control person of
719 the third-party administrator, has been found by a court of
720 competent jurisdiction to have violated state or federal laws
721 related to the administration a program authorized of the
722 provisions of ss. 163.081-163.086 or a similar program in
723 another jurisdiction within the last 5 years.
724 (c) Any officer, director, manager or managing member, or
725 control person of the third-party administrator has been
726 convicted of, or has entered a plea of guilty or nolo contendere
727 to, regardless of whether adjudication has been withheld, a
728 crime related to administration of a program authorized of the
729 provisions of ss. 163.081-163.086 or a similar program in
730 another jurisdiction within the last 10 years.
731 (d) An annual performance review reveals a substantial
732 violation or a pattern of violations by the third-party
733 administrator.

734 (5) Any recorded financing agreements at the time of
735 termination or suspension by the program administrator shall
736 continue.
737 Section 6. Section 163.085, Florida Statutes, is created
738 to read:
739 163.085 Advertisement and solicitation for financing
740 qualifying improvements programs under s. 163.081 or s.
741 163.082.—
742 (1) When communicating with a property owner or a
743 nongovernmental lessee, a program administrator, qualifying
744 improvement contractor, or third-party administrator may not:
745 (a) Suggest or imply:
746 1. That a non-ad valorem assessment authorized under s.
747 163.081 or s. 163.082 is a government assistance program;
748 2. That qualifying improvements are free or provided at no
749 cost, or that the financing related to a non-ad valorem
750 assessment authorized under s. 163.081 or s. 163.082 is free or
751 provided at no cost; or
752 3. That the financing of a qualifying improvement using
753 the program authorized pursuant to s. 163.081 or s. 163.082 does
754 not require repayment of the financial obligation.
755 (b) Make any representation as to the tax deductibility of
756 a non-ad valorem assessment. A program administrator, qualifying
757 improvement contractor, or third-party administrator may
758 encourage a property owner or nongovernmental lessee to seek the

759 advice of a tax professional regarding tax matters related to
760 assessments.
761 (2) A program administrator or third-party administrator
762 may not provide to a qualifying improvement contractor any
763 information that discloses the amount of financing for which a
764 property owner or nongovernmental lessee is eligible for
765 qualifying improvements or the amount of equity in a residential
766 property or commercial property.
767 (3) A qualifying improvement contractor may not advertise
768 the availability of financing agreements for, or solicit program
769 participation on behalf of, the program administrator unless the
770 contractor is registered by the program administrator to
771 participate in the program and is in good standing with the
772 program administrator.
773 (4) A program administrator or third-party administrator
774 may not provide any payment, fee, or kickback to a qualifying
775 improvement contractor for referring property owners or
776 nongovernmental lessees to the program administrator or third-
777 party administrator. However, a program administrator or third-
778 party administrator may provide information to a qualifying
779 improvement contractor to facilitate the installation of a
780 qualifying improvement for a property owner or nongovernmental
781 lessee.

782 (5) A program administrator or third-party administrator
783 may not reimburse a qualifying improvement contractor for its
784 expenses in advertising and marketing campaigns and materials.
785 (6) A qualifying improvement contractor may not provide a
786 different price for a qualifying improvement financed under s.
787 163.081 than the price that the qualifying improvement
788 contractor would otherwise provide if the qualifying improvement
789 was not being financed through a financing agreement. Any
790 contract between a property owner or nongovernmental lessee and
791 a qualifying improvement contractor must clearly state all
792 pricing and cost provisions, including any process for change
793 orders which meet the requirements of s. 163.081(3)(d).
794 (7) A program administrator, qualifying improvement
795 contractor, or third-party administrator may not provide any
796 direct cash payment or other thing of material value to a
797 property owner or nongovernmental lessee which is explicitly
798 conditioned upon the property owner or nongovernmental lessee
799 entering into a financing agreement. However, a program
800 administrator or third-party administrator may offer programs or
801 promotions on a non-discriminatory basis that provide reduced
802 fees or interest rates if the reduced fees or interest rates are
803 reflected in the financing agreements and are not provided to
804 the property owner or nongovernmental lessee as cash
805 consideration.

806 Section 7. Section 163.086, Florida Statutes, is created
807 to read:
808 163.086 Unenforceable financing agreements for qualifying
809 improvements programs under s. 163.081 or s. 163.082;
810 attachment; fraud.—
811 (1) A recorded financing agreement may not be removed from
812 attachment to a residential property or commercial property if
813 the property owner or nongovernmental lessee fraudulently
814 obtained funding pursuant to s. 163.081 or s. 163.082.
815 (2) A financing agreement may not be enforced, and a
816 recorded financing agreement may be removed from attachment to a
817 residential property or commercial property and deemed null and
818 void, if:
819 (a) The property owner or nongovernmental lessee applied
820 for, accepted, and canceled a financing agreement within the 3-
821 business-day period pursuant to s. 163.081(6). A qualifying
822 improvement contractor may not begin work under a canceled
823 contract.
824 (b) A person other than the property owner or
825 nongovernmental lessee obtained the recorded financing
826 agreement. The court may enter an order which holds that person
827 or persons personally liable for the debt.
828 (c) The program administrator, third-party administrator,
829 or qualifying improvement contractor approved or obtained
830 funding through fraudulent means and in violation of ss.

831 163.081-163.085, or this section for qualifying improvements on
832 the residential property or commercial property.
833 (3) If a qualifying improvement contractor has initiated
834 work on residential property or commercial property under a
835 contract deemed unenforceable under this section, the qualifying
836 improvement contractor:
837 (a) May not receive compensation for that work under the
838 financing agreement.
839 (b) Must restore the residential property or commercial
840 property to its original condition at no cost to the property
841 owner or nongovernmental lessee.
842 (c) Must immediately return any funds, property, and other
843 consideration given by the property owner or nongovernmental
844 lessee. If the property owner or nongovernmental lessee provided
845 any property and the qualifying improvement contractor does not
846 or cannot return it, the qualifying improvement contractor must
847 immediately return the fair market value of the property or its
848 value as designated in the contract, whichever is greater.
849 (4) If the qualifying improvement contractor has delivered
850 chattel or fixtures to residential property or commercial
851 property pursuant to a contract deemed unenforceable under this
852 section, the qualifying improvement contractor has 90 days after
853 the date on which the contract was executed to retrieve the
854 chattel or fixtures, provided that:

855 (a) The qualifying improvement contractor has fulfilled
856 the requirements of paragraphs (3)(a) and (b).
857 (b) The chattel and fixtures can be removed at the
858 qualifying improvement contractor's expense without damaging the
859 residential property or commercial property.
860 (5) If a qualifying improvement contractor fails to comply
861 with this section, the property owner or nongovernmental lessee
862 may retain any chattel or fixtures provided pursuant to a
863 contract deemed unenforceable under this section.
864 (6) A contract that is otherwise unenforceable under this
865 section remains enforceable if the property owner or
866 nongovernmental lessee waives his or her right to cancel the
867 contract or cancels the financing agreement pursuant to s.
868 163.081(6) or s. 163.082(6) but allows the qualifying
869 improvement contractor to proceed with the installation of the
870 qualifying improvement.
871 Section 8. Section 163.087, Florida Statutes, is created
872 to read:
873 163.087 Reporting for financing qualifying improvements
874 programs under s. 163.081 or s. 163.082.—
875 (1) Each program administrator that is authorized to
876 administer a program for financing qualifying improvements to
877 residential property or commercial property under s. 163.081 or
878 s. 163.082 shall post on its website an annual report within 45
879 days after the end of its fiscal year containing the following

880 information from the previous year for each program authorized
881 under s. 163.081 or s. 163.082:
882 (a) The number and types of qualifying improvements
883 funded.
884 (b) The aggregate, average, and median dollar amounts of
885 annual non-ad valorem assessments and the total number of non-ad
886 valorem assessments collected pursuant to financing agreements
887 for qualifying improvements.
888 (c) The total number of defaulted non-ad valorem
889 assessments, including the total defaulted amount, the number
890 and dates of missed payments, and the total number of parcels in
891 default and the length of time in default.
892 (d) A summary of all reported complaints received by the
893 program administrator related to the program, including the
894 names of the third-party administrator, if applicable, and
895 qualifying improvement contractors and the resolution of each
896 complaint.
897 (2) The Auditor General must conduct an operational audit
898 of each program authorized under s. 163.081 or s. 163.082,
899 including any third-party administrators, for compliance with
900 the provisions of ss. 163.08-163.086 and any adopted ordinance
901 at least once every 24 months. The Auditor General may stagger
902 evaluations such that a portion of all programs are evaluated in
903 1 year; however, every program must be evaluated at least once
904 by September 1, 2027. Each program administrator, and third-

905 party administrator if applicable, must post the most recent
906 report on its website.
907 Section 9. This act shall take effect July 1, 2024.
908
909
910 ---
911 **T I T L E A M E N D M E N T**
912 Remove everything before the enacting clause and insert:
913 An act relating to improvements to real property; amending s.
914 163.08, F.S.; deleting provisions relating to legislative
915 findings and intent; defining terms and revising definitions;
916 creating ss. 163.081 and 163.082, F.S.; allowing a program
917 administrator to offer a program for financing qualifying
918 improvements for residential or commercial property when
919 authorized by a county or municipality; requiring an authorized
920 program administrator that administers an authorized program to
921 meet certain requirements; authorizing a county or municipality
922 to enter into an interlocal agreement to implement a program;
923 authorizing a program administrator to contract with third-party
924 administrators to implement the program; authorizing a program
925 administrator to levy non-ad valorem assessments for a certain
926 purpose; authorizing a program administrator to incur debt for
927 the purpose of providing financing for qualifying improvements;
928 authorizing the owner of the residential property or commercial
929 property or certain nongovernmental lessees to apply to the

930 program administrator to finance a qualifying improvement;
931 requiring the program administrator to make certain findings
932 before entering into a financing agreement; requiring the
933 program administrator to ascertain certain financial information
934 from the property owner or nongovernmental lessee before
935 entering into a financing agreement; requiring certain
936 documentation; requiring certain financing agreement and
937 contract provisions for change orders if the property owner or
938 nongovernmental lessee and program administrator agree to allow
939 change orders to complete a qualifying improvement; prohibiting
940 a financing agreement from being entered into under certain
941 circumstances; requiring the program administrator to provide
942 certain information before a financing agreement may be
943 approved; requiring an oral, recorded telephone call with the
944 residential property owner to confirm findings and disclosures
945 before the approval of a financing agreement; requiring the
946 residential property owner to provide written notice to the
947 holder or loan servicer of his or her intent to enter into a
948 financing agreement as well as other financial information;
949 requiring that proof of such notice be provided to the program
950 administrator; providing that a certain acceleration provision
951 in an agreement between the residential property owner and
952 mortgagor or lienholder is unenforceable; providing that the
953 lienholder or loan servicer retains certain authority; requiring
954 the program administrator to receive the written consent of

955 certain lienholders on commercial property; authorizing a
956 residential property owner, under certain circumstances and
957 within a certain timeframe, to cancel a financing agreement
958 without financial penalty; requiring recording of the financing
959 agreement in a specified timeframe; creating the seller's
960 disclosure statements for properties offered for sale which have
961 assessments on them for qualifying improvements; requiring the
962 program administrator to confirm that certain conditions are met
963 before disbursing final funds to a qualifying improvement
964 contractor for qualifying improvements on residential property;
965 requiring a program administrator to submit a certain
966 certificate to a county or municipality upon final disbursement
967 and completion of qualifying improvements; creating s. 163.083,
968 F.S.; requiring a county or municipality to establish or approve
969 a process for the registration of a qualifying improvement
970 contractor to install qualifying improvements; requiring certain
971 conditions for a qualifying improvement contractor to
972 participate in a program; prohibiting a third-party
973 administrator from registering as a qualifying improvement
974 contractor; requiring the program administrator to monitor
975 qualifying improvement contractors, enforce certain penalties
976 for a finding of violation, and post certain information online;
977 creating s. 163.084, F.S.; authorizing the program administrator
978 to contract with entities to administer an authorized program;
979 providing certain requirements for a third-party administrator;

980 prohibiting a program administrator from contracting with a
981 third-party administrator under certain circumstances; requiring
982 the program administrator to include in its contract with the
983 third-party administrator the right to perform annual reviews of
984 the administrator; authorizing the program administrator to take
985 certain actions if the program administrator finds that the
986 third-party administrator has committed a violation of its
987 contract; authorizing a program administrator to terminate an
988 agreement with a third-party administrator under certain
989 circumstances; providing for the continuation of certain
990 financing agreements after the termination or suspension of the
991 third-party administrator; creating s. 163.085, F.S.; requiring
992 that, in communicating with the property owner or
993 nongovernmental lessee, the program administrator, qualifying
994 improvement contractor, or third-party administrator comply with
995 certain requirements; prohibiting the program administrator or
996 third-party administrator from disclosing certain financing
997 information to a qualifying improvement contractor; prohibiting
998 a qualifying improvement contractor from making certain
999 advertisements or solicitations; providing exceptions;
1000 prohibiting a program administrator or third-party administrator
1001 from providing certain payments, fees, or kickbacks to a
1002 qualifying improvement contractor; authorizing a program
1003 administrator or third-party administrator to reimburse a
1004 qualifying improvement contractor for certain expenses;

1005 prohibiting a qualifying improvement contractor from providing
1006 different prices for a qualifying improvement; requiring a
1007 contract between a property owner or nongovernmental lessee and
1008 a qualifying improvement contractor to include certain
1009 provisions; prohibiting a program administrator, third-party
1010 administrator, or qualifying improvement contractor from
1011 providing any cash payment or anything of material value to a
1012 property owner or nongovernmental lessee which is explicitly
1013 conditioned on a financing agreement; creating s. 163.086, F.S.;
1014 prohibiting a recorded financing agreement from being removed
1015 from attachment to a property under certain circumstances;
1016 providing for the unenforceability of a financing agreement
1017 under certain circumstances; providing provisions for when a
1018 qualifying improvement contractor initiates work on an
1019 unenforceable contract; providing that a qualifying improvement
1020 contractor may retrieve chattel or fixtures delivered pursuant
1021 to an unenforceable contract if certain conditions are met;
1022 providing that an unenforceable contract will remain
1023 unenforceable under certain circumstances; creating s. 163.087,
1024 F.S.; requiring a program administrator authorized to administer
1025 a program for financing a qualifying improvement to post on its
1026 website an annual report; specifying requirements for the
1027 report; requiring the auditor general to conduct an operational
1028 audit of each authorized program; providing an effective date.
1029

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1645 Energy Resources
SPONSOR(S): Payne
TIED BILLS: **IDEN./SIM. BILLS:** SB 1624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Bauldree	Keating
2) Appropriations Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill updates Florida's energy policies and amends specific energy-related laws. Specifically, the bill:

- Provides an updated statement of legislative intent concerning the state's energy policy, establishes a list of specific, fundamental policy goals to guide the state's energy policy.
- Updates energy policy statements in current law and the duties of the Department of Agriculture and Consumer Services (DACS) to be consistent with the energy policy goals established in the bill.
- Requires public utilities to obtain approval from the Public Service Commission (PSC) to retire certain electrical power plants, and requires the PSC to inform and provide technical support to the Attorney General if a plant retirement is required or induced by federal regulation and is inconsistent with the state's energy policy goals.
- Requires the PSC to develop certain smart grid policies which must be submitted for consideration by, and may not be implemented until approved by, the Legislature.
- Increases the minimum length of an intrastate natural gas pipeline that requires certification under the Natural Gas Transmission Pipeline Siting Act from 15 miles to 100 miles.
- Provides that certain "resiliency facilities" owned and operated by a public utility to deploy natural gas reserves for temporary use during a system outage or natural disaster are a permitted use in all commercial, industrial, and manufacturing land use categories and districts, subject to setback and landscape criteria for other similar uses.
- Requires the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats and to submit a report.
- Prohibits the PSC, without specific legislative authority, from authorizing a public utility to make direct sales of energy to a consumer solely for the consumer's use in powering a means of transportation.
- Authorizes the PSC to approve a utility program for residential, customer-specific electric vehicle (EV) charging if the program will not adversely impact the utility's general body of ratepayers.
- Eliminates specified requirements for public business related to the purchase of certain products and services.
- Requires the Department of Management Services (DMS) to develop the Florida Humane Preferred Energy Products List to identify certain products that appear to be largely made free from forced labor.
- Repeals the Renewable Energy and Energy-Efficient Technologies Grant Program, Florida Green Government Grants, the Energy Economic Zone Pilot Program, and Qualified Energy Conservation Bonds provisions.
- Requires the Department of Transportation to offer potential access to vendors of certain alternative motor vehicle fuels and repowering stations along the turnpike system.
- Prohibits community development districts and homeowners' associations from prohibiting certain types or fuel sources of energy production and appliances that use such fuels.
- Creates an EV Battery Deposit Program within the Department of Highway Safety and Motor Vehicles (DHSMV).
- Requires the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies and to submit a report of its findings and recommendations.
- Requires DOT to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system.

The bill does not appear to impact state or local government revenues or local government expenditures. The bill appears to have a negative impact on state government expenditures, which may be offset to some degree by potential savings related to the elimination of specified purchasing requirements. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Energy Profile

Florida is the third most populous state and the fourth largest energy-consuming state in the nation. However, Florida uses less energy per capita than all but six other states, in part because of its large population, moderate winter weather, and relatively low industrial sector energy use.[1] Florida's energy consumption can be broken down by end-use sector as follows:[2]

- Transportation – 39%
- Residential – 28%
- Commercial – 22%
- Industrial – 11%

In the electric power industry, natural gas is the dominant fuel in Florida and since 2011 has generated more electric power than all other fuels combined. Natural gas fueled approximately 70 percent of electric energy consumed in Florida in 2022. This number is anticipated to decline over the next ten years, reaching 56 percent by 2032.[3] Florida has very little natural gas production and limited gas storage capacity, thus the state is reliant upon out-of-state production and storage to satisfy its demand.[4] Supply from out-of-state is provided by five interstate natural gas pipelines, with the majority of peninsular Florida's supply provided by three interstate pipelines: Florida Gas Transmission Pipeline, Gulf Stream Natural Gas System, and Sabal Trail Transmission.[5]

In 2022, renewable energy resources were used to generate approximately 14 percent of the electric energy consumed in Florida. This number is anticipated to increase over the next ten years, reaching 28 percent by 2032, primarily from the addition of new solar generation. Solar generation in Florida is expected to exceed all non-natural gas energy sources combined (primarily nuclear and coal) by 2029.[6]

Of the current renewable generation capacity in Florida, approximately 37 percent is considered a "firm" resource than can be relied upon to serve customers and defer the need for traditional power plants. Because of the coincidence of solar generation and the peak demand for electrical energy, about 40 percent of installed solar generation is considered a firm resource. For utility-scale solar projects, that number increases to 52 percent. As the amount of solar increases in the state, the difference in how it operates compared to traditional generation will have an increasing importance to the grid. Solar generation cannot be dispatched as needed, but is produced based upon the conditions at the plant site, influenced by variations in daylight hours, cloud cover, and other environmental factors. Generally, the peak hours for production of a solar facility are closer to noon, whereas the peak in system demand tends to be in the early evening in summer and early morning in winter. Still, Florida is projected to meet its electricity demand and carry a reserve margin of between 16.4 and 30.1 percent on a statewide basis over the next 10 years.[7]

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[1] U.S. Energy Information Administration (EIA), *Florida, State Profile and Energy Estimates, Analysis*, https://www.eia.gov/state/analysis.php?sid=FL#:~:text=Renewable%20resources%20fueled%20about%206,generation%20came%20from%20solar%20energy (last visited Jan. 12, 2024).
[2] EIA, *Florida, State Profile and Energy Estimates, Data,* https://www.eia.gov/state/data.php?sid=FL (last visited Jan. 12, 2024). These figures reflect consumption in 2021, the most recent period reported by EIA for the state.
[3] Florida Public Service Commission (FPSC), *Review of the 2023 Ten-Year Site Plans of Florida's Electric Utilities*, available at https://www.floridapsc.com/pscfiles/website-files/PDF/Utilities/Electricgas/TenYearSitePlans//2023/Review.pdf (last visited Jan. 12, 2024).
[4] *Id.* at 42.
[5] FPSC, *Facts and Figures of the Florida Utility Industry, 2023*, at 17, https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf (last visited Jan. 15, 2024).
[6] FPSC, *supra* note 3.
[7] *Id.*

Since 2001, utility-scale electric generation from renewable resources in Florida had grown only 28 percent through 2016, but had grown over 300 percent by 2022.[8] Customer-owned renewable generation connected to the electric grid in Florida has also grown dramatically in recent years, increasing 460 percent from 2018 to 2022. This growth appears to correlate with decreasing prices for both utility-scale and customer-owned solar generation systems.[9]

In the transportation sector, the market for electric vehicles (EV) in Florida has grown significantly in recent years and is expected to continue growing.[10] Including both full battery electric vehicles and plug-in hybrid electric vehicles, only 21,700 EVs were registered in Florida in 2016; that number increased to 213,800 in 2022, second only to California.[11] Florida's generating electric utilities anticipate that annual EV energy consumption in their service territories will increase at a rate of almost 20% per year through 2032 and will comprise 3.9 percent of their net energy for load and 4 percent of summer peak demand in 2032.[12] This growth is accounted for in utility planning.[13] Registrations for compressed natural gas vehicles in Florida have declined from 18,000 in 2016 to 400 in 2022, and there is no data for registration of hydrogen-fueled vehicles in Florida for 2022.[14] Gasoline powered vehicles still account for the overwhelming majority of vehicle registrations in Florida, with almost 16 million registered in Florida.[15]

The United States Environmental Protection Agency (EPA) maintains an inventory of greenhouse gas (GHG) emissions by state, end-use sector, and type of gas, with the most recent inventory data for 2021.[16] According to this inventory, Florida's net GHG emissions for all sectors peaked in 2005 and were slightly lower (0.7 percent) in 2021 as compared to 2008.[17] GHGs reported to the EPA by large facilities[18] in Florida have declined from 147 million metric tons in 2010 to 113 million metric tons in 2022.[19] In 2021, the transportation sector accounted for 41 percent of Florida's GHG emissions, the electric power industry accounted for 35 percent, and the remaining 24 percent was associated with the industrial, commercial, agricultural, and residential sectors.[20]

State Energy Policy and Governance (Sections 10-12)

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[8] EIA, *Electricity Data Browser,* https://www.eia.gov/electricity/data/browser/#/topic/0?agg=2,0,1&fuel=02fh&geo=g000001&sec=g&linechart=ELEC.GEN.AOR-US-99.A~ELEC.GEN.AOR-FL-99.A&columnchart=ELEC.GEN.AOR-US-99.A&map=ELEC.GEN.AOR-US-99.A&freq=A&start=2001&end=2022&chartindexed=1&ctype=linechart<ype=pin&rtype=s&maptype=0&rse=0&pin= (last visited Jan. 12, 2024).

[9] *See, e.g.,* NREL, *Documenting a Decade of Cost Declines for PV Systems*, Feb. 10, 2021, https://www.nrel.gov/news/program/2021/documenting-a-decade-of-cost-declines-for-pv-systems.html (last visited Jan. 12, 2024) (stating that, from 2010 to 2020, there had been a 64%, 69%, and 82% reduction in the cost of residential, commercial-rooftop, and utility-scale PV systems, respectively and that a significant portion of the cost declines over that decade can be attributed to an 85% cost decline in module price).

[10] Florida Department of Transportation (FDOT), *Florida's Electric Vehicle Infrastructure Deployment Plan, August 2023*, at 17, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/emergingtechnologies/evprogram/2023_florida's-evidp_update_092923.pdf?sfvrsn=1e4aee0_1 (last visited Jan. 15, 2024).

[11] U.S Department of Energy (DOE), *Alternative Fuels Data Center*, https://afdc.energy.gov/transatlas/#/?state=FL&view=vehicle_count (last visited Jan. 15, 2024).

[12] FPSC, *supra* note 3, at 5-6, 19.

[13] *Id.* at 17-20/.

[14] DOE, *supra* note 11.

[15] *Id.*

[16] For purposes of the EPA's inventory, GHGs include carbon dioxide, methane, fluorinated gases, and nitrous oxide. The inventory also accounts for changes associated with land use and forestry that affect the land's ability to serve as a sink for GHG emissions. EPA*, Greenhouse Gas Inventory Data Explorer,* https://cfpub.epa.gov/ghgdata/inventoryexplorer/#iallsectors/allsectors/allgas/gas/all (last visited Jan, 15, 2024).

[17] *Id.*

[18] Facilities that emit 25,000 metric tons or more per year of GHGs are required to annually report their GHG emissions to the EPA. Roughly half of total U.S. GHG emissions are reported by direct emitters. EPA, *Facility Level Information on Greenhouse Gases Tool,* https://ghgdata.epa.gov/ghgp/main.do?site_preference=normal (last visited Jan. 12, 2024).

[19] *Id.*

[20] EPA, *supra* note 15.

Present Situation

In 1974, in response to the 1973-1974 oil embargo,[21] the Legislature, upon finding that a lack of accurate and relevant information was hampering its ability to develop energy policy to address the energy resource shortages facing the state, created an "energy data center" to collect data on production, refinement, transportation, storage, and sale of energy resources in Florida, including all types of fossil fuels, nuclear energy, and renewables.[22] Three years later, the Legislature developed an energy policy statement with a focus on energy conservation, alternative energy resources, and public education about energy use.[23] This energy policy statement is still mostly intact in Florida law.[24]

In 1978, the Legislature transferred the duties of the energy data center to the former Department of Administration and expanded those duties to include additional data analysis and forecasting, public education, promoting conservation, and coordinating state energy-related programs.[25] This list of duties is now reflected in the duties established in current law for the Department of Agriculture and Consumer Services (DACS).[26]

Florida's current energy policies are largely established through various provisions of law related to specific aspects of energy production, distribution, sales, and use. The Legislature last addressed energy policy at a holistic level in 2008,[27] when it adopted the following statement of intent with regard to energy resource planning and development, which is unchanged in current law:[28]

> The Legislature finds that the state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.

In 2008, the Legislature also adopted the following energy policy statements, which are unchanged in current law:[29]

It is the policy of the State of Florida to:

- Develop and promote the effective use of energy in the state, discourage all forms of energy waste, and recognize and address the potential of global climate change wherever possible.
- Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions.

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[21] *See, generally,* U.S Department of State, Office of the Historian, *Oil Embargo, 1973-1974*, https://history.state.gov/milestones/1969-1976/oil-embargo (last visited Jan. 12, 2024).
[22] Ch. 74-186, L.O.F.
[23] Ch. 77-334, L.O.F.
[24] *See* s. 377.601(2), F.S.
[25] Ch. 78-25, L.O.F.
[26] *See* ss. 377.603 and 377.703, F.S.
[27] Ch. 2008-227, L.O.F.
[28] S. 377.601(1), F.S.
[29] S. 377.601(2), F.S.

- Include energy considerations in all state, regional, and local planning.
- Utilize and manage effectively energy resources used within state agencies.
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.
- Include the full participation of citizens in the development and implementation of energy programs.
- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible.
- Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact.
- Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources.
- Consider, in its decisionmaking, the social, economic, and environmental impacts of energy-related activities, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized.
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within Florida.

Under current law,[30] DACS is required to perform the following functions, consistent with the development of a state energy policy:

- Perform or coordinate the functions of any federal energy programs delegated to the state, including energy supply, demand, conservation, or allocation.
- Analyze present and proposed federal energy programs and make recommendations regarding those programs to the Governor and the Legislature.
- Coordinate efforts to seek federal support or other support for state energy activities, including energy conservation, research, or development, and is responsible for the coordination of multiagency energy conservation programs and plans.
- Analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Public Service Commission (PSC), which is responsible for electricity and natural gas forecasts, which must contain:
    - An analysis of the relationship of state economic growth and development to energy supply and demand.
    - Plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas, and an analysis of the extent to which renewable energy sources are being utilized in the state.
    - Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years to identify strategies for long-range action, including identification of potential social, economic, and environmental effects.
    - An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both.
- Submit an annual report to the Governor and the Legislature reflecting its activities and making recommendations for policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state, including a report from the PSC on electricity and natural gas and information on energy conservation programs, with recommendations for energy efficiency and conservation programs for the state.
- Promote the development and use of renewable energy resources, consistent with the state comprehensive plan and the policy statements made in 2008.
- Promote energy efficiency and conservation in all energy use sectors in the state, including consultation with the Department of Management Services to coordinate energy conservation programs of state agencies.

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[30] S. 377.703, F.S.

- Serve as the state clearinghouse for indexing and gathering all information related to energy programs in state universities, in private universities, in federal, state, and local government agencies, and in private industry and prepare and distribute this information in any manner necessary to inform and advise the public.
- Coordinate energy-related programs of state government.
- Promote a comprehensive research plan for state programs, which must be consistent with state energy policy and be updated on a biennial basis.
- Prepare an assessment of the state's renewable energy production credit.

DACS is also responsible for administering the Florida Renewable Energy Technologies and Energy Efficiency Act,[31] which consists of the Renewable Energy and Energy-Efficient Technologies Grant Program, and the Florida Green Government Grants Act.[32] Both programs are discussed in further detail in this analysis under *Energy Grant Programs*, below.

Effect of the Bill

The bill replaces the current statement of legislative intent concerning the state's energy policy with a more streamlined statement of intent that expresses the purpose of the state's energy policy. The new statement of intent provides:

> The purpose of the state's energy policy is to ensure an adequate and reliable supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The Legislature intends that governance of the state's energy policy be efficiently directed toward achieving this purpose.

For purposes of achieving this new statement of intent, the bill provides a list of specific, fundamental policy goals to guide the state's energy policy. These goals are:

- Ensuring a cost-effective and affordable energy supply;
- Ensuring adequate supply and capacity;
- Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources;
- Protecting public safety;
- Ensuring consumer choice;
- Protecting the state's natural resources, including its coastlines, tributaries, and waterways; and
- Supporting economic growth.

The bill's revised statement of intent removes current legislative findings related to global climate change, and the bill's list of energy policy goals does not specifically address global climate change.

Consistent with the bill's revised statement of legislative intent and its list of energy policy goals, the bill revises the energy policy statements in current law. These changes:

- Specify that it is the state's policy to promote the "cost-effective development and use of a diverse supply of domestic energy resources in the state," rather than the "effective use of energy in the state."
- Remove a provision that provides for recognizing and addressing "the potential of global climate change" as a state energy policy.
- Add that promotion of "the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply" is a state energy policy.
- Remove a provision that provides for the state to "play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions."

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[31] Ss. 377.801-377.804, F.S.

[32] S. 377.808, F.S.

- Add that reduction of "reliance on foreign energy resources" is a state energy policy.
- Provide that it is the state's policy to promote energy education and dissemination of public information on energy and its impacts in relation to the list of energy policy goals established by the bill.
- Provide that it is the state's energy policy to consider, in its decision-making, the impacts of energy-related activities on the energy policy goals established in the bill.
- Provide that it is the state's energy policy to encourage the research, development, demonstration, and application of domestic energy resources, including the use of renewable resources.

The bill also revises DACS' energy-related duties to be consistent with these changes. First, the bill requires that DACS advocate for energy issues consistent with the bill's list of energy policy goals. Next, the bill provides that DACS' energy data analyses must address potential impacts in relation to the bill's list of energy policy goals. The bill removes a provision that requires these analyses to include plans for development of renewable energy resources and reduction in dependence on depletable energy resources.

Reliability and Resilience of Energy Infrastructure and Supply (Sections 1, 8, 17, 19, 20)

Present Situation

Florida's Electrical Power Grid

- State Oversight of Electrical Power Plant Development

The electric power grid primarily consists of a network of transmission lines, substations, distribution lines, transformers, and meters that deliver electricity from electrical power plants to homes and businesses. Since 1974, the PSC has had jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes and to avoid uneconomic duplication of facilities.[33] The PSC exercises this jurisdiction, in part, through its review of electric utilities' ten-year plans regarding power generating needs and proposed electrical power plant sites[34] and through its review of applications for certain electrical power plant additions and expansions under the Florida Electrical Power Plant Siting Act (PPSA)[35] and certain intrastate transmission line additions and expansions under the Florida Electric Transmission Line Siting Act (TLSA).[36]

Florida's Department of Environmental Protection (DEP), through its Division of Air Resource Management, is charged with protecting and managing Florida's air resource, including monitoring air quality, issuing permits for construction and operation of certain sources of emissions, and enforcing compliance by those sources with applicable federal and state regulations.[37]

The PPSA and TLSA establish centrally coordinated permitting processes for the siting of certain electrical power plants and transmission lines. These processes are administered by DEP and allow for input from state agencies and local governments whose jurisdictions are impacted by a proposed plant or transmission line. Both laws are intended "to effect a reasonable balance" between the need for a facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and water resources and other natural resources of the state.[38]

[33] Ch. 74-196, L.O.F., codified at s. 366.04(5), F.S.
[34] S. 186.801, F.S.
[35] Ss. 403.501-403.508, F.S.
[36] Ss. 403.52-403.5365, F.S.
[37] Florida Department of Environmental Protection (DEP), *Division of Air Resource Management*, https://floridadep.gov/air (last visited January 19, 2024); DEP, *Florida's Air Quality*, https://floridadep.gov/sites/default/files/Air%20Quality%20in%20Florida%200816-web.pdf (last visited January 19, 2024).
[38] Ss. 403.502 and 403.521, F.S.

The PSC is the sole forum for determining the need for an electrical power plant subject to the PPSA or a transmission line subject to the TLSA.[39] The PSC's affirmative determination of need is required before DEP will conduct a project analysis and certification hearing for an electrical power plant or transmission line.[40]

For purposes of certification under the PPSA, an electrical power plant includes any steam or solar electrical generating facility using any process or fuel (excluding facilities of less than 75 megawatts (MW) in capacity), plus the site, associated facilities physically or indirectly connected to the site, and associated power lines that connect the proposed plant to the electric grid.[41] Thus, most of the state's large, baseload power plants, including natural gas combined cycle power plants, coal power plants, and nuclear power plants, require certification under the PPSA. Most utility-scale solar facilities in Florida have been configured to fall just below the 75 MW threshold and have not required certification under the PPSA.

In determining the need for an electrical power plant, the PSC must take into account:

- The need for electric system reliability and integrity;
- The need for adequate electricity at a reasonable cost;
- The need for fuel diversity and supply reliability;
- Whether the proposed plant is the most cost-effective alternative available;
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available;
- The conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant; and
- Other matters within its jurisdiction which it deems relevant.[42]

The PSC's determination of need for an electrical power plant creates a presumption of public need and necessity for the plant.[43]

In determining the need for a transmission line, the PSC must take into account:

- The need for electric system reliability and integrity;
- The need for abundant, low-cost electrical energy to assure the economic well-being of the residents of this state;
- The appropriate starting and ending point of the line; and
- Other matters within its jurisdiction which it deems relevant.[44]

Ultimately, the Governor and Cabinet, who sit as the siting board, must consider the PSC's determination of need along with land use and environmental issues when determining whether a proposed electrical power plant or transmission line should be approved, approved with modifications or conditions, or denied.[45]

- Proposed EPA Rules on Greenhouse Gas Emissions

In May 2023, the U.S. Environmental Protection Agency (EPA) proposed new rules to limit GHG emissions from new and existing fossil fuel-fired electrical power plants and invited comments on its proposed rules. Under these proposed rules, the specific standards vary by the type of power plant (e.g., new or existing, coal-fired or natural-gas fired), how frequently it is used (base load, intermediate load, or peak load[46]), and its operating horizon.[47]

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[39] Ss. 403.519 and 403.537, F.S.
[40] Ss. 403.507(4) and 403.537(1)(d), F.S.
[41] Ss. 403.503(14) and 403,506(1), F.S.
[42] S. 403.519(3), F.S.
[43] *Id.*
[44] S. 403.537(1)(c), F.S.
[45] Ss. 403.509(3) and 403.529, F.S.
[46] Though these terms may have more specific meanings in the EPA's proposed rule, in general:

For existing fossil fuel-fired stationary combustion turbines (primarily natural gas-fired units), these proposed standards require the use of either:

- Carbon capture and sequestration (CCS) technologies that achieve a 90% capture of GHG emissions by 2035; or
- The use of 30% (by volume) hydrogen produced from low-GHG emitting fuels to help fuel ("co-fire") the plant by 2032, increasing to 96% by 2038.[48]

For existing fossil fuel-fired steam generating units (primarily coal-fired units), the proposed standards vary based on the operating horizon of the unit. Units committed either to cease operations by January 1, 2032, or to cease operations by January 1, 2035, and operate at a capacity factor limit of 20 percent, face no requirements beyond routine maintenance. Units committed to cease operations by January 1, 2040, must co-fire with 40% (by volume) natural gas and achieve a 16 percent emissions rate reduction by 2030.[49]

The proposed rules would require states, within 24 months of the effective date of the emissions guidelines, to submit plans to the EPA that provide for the establishment, implementation, and enforcement of standards of performance for existing sources. These state plans must generally establish standards that are at least as stringent as EPA's emission guidelines.[50]

Both the PSC and DEP submitted comments in opposition to the proposed rules. In its response, the PSC noted that:

> As of 2021, nearly 70% of Florida's electricity generation came from natural gas and nearly 10% from coal. In 2031, the combined share of natural gas- and coal-fired electricity is currently estimated to be close to 70%. Therefore, a significant percentage of the generation in Florida could be impacted by the Proposed Rule. The FPSC has concerns that the Proposed Rule will adversely affect the reliability and cost of electricity service in Florida.[51] (footnotes omitted)

Further, both the PSC and DEP noted that CCS and hydrogen co-firing have not been adequately demonstrated and that the proposed performance standards are not achievable by Florida's power plant operators.[52] DEP further commented:

- "Base load" power plants normally supply all or part of the minimum, or base, demand (load) on the electric power grid; a base load generating unit runs continuously, producing electricity at a nearly constant rate throughout most of the day.
- "Peak load," or "peaking," power plants help to meet electricity demand when demand is at its highest, or peak, such as in the late afternoon when electricity use for air conditioning increases during hot weather.
- "Intermediate load" power plants provide load responsive operation between base load and peaking service; the demand profile varies over time and intermediate sources are in general technically and economically suited for following the changes in demand.

See, e.g., EIA, *Electricity explained,* https://www.eia.gov/energyexplained/electricity/electricity-in-the-us-generation-capacity-and-sales.php (last visited Jan. 22, 2024).

[47] EPA, *Fact Sheet – Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants, Proposed Rule (Fact Sheet),* https://www.epa.gov/system/files/documents/2023-05/FS-OVERVIEW-GHG-for%20Power%20Plants%20FINAL%20CLEAN.pdf (last visited Jan. 22, 2024).

[48] *Id.* New base load units of the same type must satisfy these same standards and must use the most efficient available turbines. New intermediate load units of the same type must be co-fired with 30% (by volume) hydrogen produced from low-GHG emitting fuels by 2032 and must use the most efficient available turbines.

[49] *Id.*

[50] *Id.*

[51] Comments of the Florida Public Service Commission, Aug. 3, 2023, U.S. EPA Docket No. EPA-HQ-OAR-2023-0072: New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.

[52] *Id. See also* Comments by the Florida Department of Environmental Protection (DEP Comments), Aug. 8, 2023, U.S. EPA Docket No. EPA-HQ-OAR-2023-0072: New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From *Existing* Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.

> By prioritizing the use of unfounded technologies to force a reduction in readily available generation assets, the [EPA] places the reliability, affordability, and capacity of the nation's energy supply at risk. This risk is especially concerning given Florida's geographic position and natural susceptibility to hurricanes and natural disasters.[53]

In its comments, the PSC asked that the EPA address these concerns by providing electric generating units (EGUs) with adequate timeframes and flexibility. The PSC stated that:

> [A] longer glide path for implementation would provide EGUs with adequate time to plan, invest, and optimize compliance measures, and it would facilitate a smoother integration of new technologies while enabling necessary infrastructure upgrades and a phased retirement or retrofitting of existing assets if required. This approach also avoids premature retirements that could result in stranded investments and potential reliability concerns. Moreover, a longer transition period would allow for additional development and deployment of advanced technologies, avoiding potential grid instability and ensuring the viability, scalability, and cost-effectiveness of emerging technologies before widespread implementation.[54]

- Electrical Power Plant Retirements

Current law does not require approval of a decision to retire an electrical power plant. Retirements generally occur when an electric utility is unable to economically operate or maintain the plant due to environmental, economic, or technical concerns.[55] Planned retirements are reflected in annual, long-term plans submitted by electric utilities to the PSC for preliminary study.[56]

Smart Grid

The concept of a "smart grid" involves overlaying the electric power grid with digital technology that allows for two-way communication between utilities, components of their systems, and their customers and remote sensing along transmission and distribution lines.[57] Some of the benefits of a smart grid include:

- More efficient transmission of electricity;
- Quicker restoration of electricity after power disturbances;
- Reduced operations and management costs for utilities, and ultimately lower power costs for consumers;
- Providing information that allows consumers to better manage usage and costs;
- Reduced peak demand, which may also help lower electricity rates;
- Increased integration of large-scale renewable energy systems;
- Better integration of customer-owner power generation systems; and
- Improved security.[58]

Many Florida electric utilities have taken steps to begin modernizing their electric grids to provide some of this functionality.[59] Smart grids continue to evolve as technologies are perfected, equipment is installed, and systems are tested.[60]

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[53] *Id.*.
[54] FPSC Comments, *supra* note 51.
[55] FPSC, *supra* note 3, at 37.
[56] *See, generally,* s. 186.801, F.S., requiring electric utilities to submit "10-year site plans" to the PSC for a preliminary study and specifying the topics to be addressed in the PSC's preliminary study.
[57] U.S. DOE, Office of Electricity, *The Smart Grid*, https://www.smartgrid.gov/the_smart_grid/smart_grid.html (last visited Jan. 26, 2024).
[58] *Id.*
[59] *See, e.g.,* Presentations to the Florida House of Representatives, Commerce Committee, by Brian Lloyd, Duke Energy Florida, *Building a Smarter Energy Future* (Nov. 14, 2023) and David Lukcic, TECO Tampa Electric, *Grid Modernization Transformative Journey* (Nov. 14, 2023) available at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3220&Session=2024&DocumentType=Meeting+Packets&FileName=com+11-14-23.pdf (last visited Jan. 26, 2024).

Natural Gas Infrastructure

Natural gas is transported to Florida consumers via three major interstate pipelines: Florida Gas Transmission Company (3.2 billion cubic feet, or bcf, per day), Gulfstream Natural Gas System (1.4 bcf per day), and Sabal Trail Interstate Pipeline (1.1 bcf per day). Florida also receive natural gas from two minor interstate pipelines: Gulf South Pipeline Company reaches into northwest Florida, and Southern Natural Gas reaches into north Florida.[61] Companies seeking to build interstate natural gas pipelines must obtain certificates of public convenience and necessity issued by the Federal Energy Regulatory Commission (FERC). FERC considers both economic and environmental factors in its review.[62]

Construction and operation of intrastate natural gas pipelines generally require approval through a process similar to the PPSA and TLSA processes. The Natural Gas Transmission Pipeline Siting Act (NGTPSA)[63] is the state's process for licensing the construction and operation of such pipelines within Florida.[64] The NGTPSA provides a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of natural gas transmission pipelines in Florida.[65]

An intrastate natural gas pipeline does not require certification if the pipeline:

- Is less than 15 miles long or does not cross a county line;[66]
- Has been issued a certificate of public convenience and necessity by FERC under s. 7 of the Natural Gas Act;[67]
- Has been certified as an associated facility to an electrical power plant pursuant to the PPSA;[68] or
- Is owned or operated by a municipality or an agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas.[69]

These exceptions do not preclude an applicant from applying for certification under the NGTPSA.[70]

The U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) implements federal pipeline safety standards for interstate and intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage under the Pipeline Safety Act.[71] The Pipeline Safety Act authorizes state assumption of the intrastate regulatory, inspection, and enforcement responsibilities subject to an annual certification with PHMSA.[72] State agencies must adopt standards that comply with the Pipeline Safety Act to qualify for certification.

In Florida, The Gas Safety Law of 1967 authorizes the PSC to regulate the safe transmission and distribution of natural gas in Florida.[73] The Gas Safety Law grants the PSC exclusive jurisdiction over "all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their

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[60] DOE, *supra* note 57.
[61] FPSC, *supra* note 5, at 13 and 17.
[62] *See* Congressional Research Service, *Interstate Natural Gas Pipeline Siting: FERC Policy and Issues for Congress*, Jun. 9, 2024, available at https://crsreports.congress.gov/product/pdf/R/R45239 (last visited Jan. 23, 2024).
[63] Ss. 403.9401-403.9425, F.S.
[64] Florida Department of Environmental Protection, *Natural Gas Pipeline Siting Act* (July 27, 2022), https://floridadep.gov/water/siting-coordination-office/content/natural-gas-pipeline-siting-act (last visited Jan. 18, 2024).
[65] S. 403.9402, F.S.
[66] S. 403.9405(2)(a), F.S.
[67] S. 403.9405(2)(b), F.S.
[68] S. 403.9405(2)(b), F.S.
[69] S. 403.9405(2)(c), F.S.
[70] S. 403.9405(2)(a)-(c), F.S.
[71] *See* 49 U.S.C. §§ 60102-60143.
[72] 49 U.S.C. §§ 60105(e), 60106(d).
[73] S. 368.01-061, F.S.

compliance with the rules and regulations governing safety standards."[74] Under this authority, the PSC promulgates rules covering the design, improvement, fabrication, installation, inspection, repair, reporting, testing, and safety standards of gas transmission and gas distribution systems.[75] The PSC is currently the state agency certified by PHMSA to inspect and enforce intrastate gas pipelines.[76]

Land Development Regulations and Comprehensive Plans

Under the Community Planning Act, local governments manage local growth through comprehensive plans enforced by local land use ordinances.[77] The Act prescribes certain principles, guidelines, standards, and strategies to allow for an orderly and balanced future land development[78] and outlines the required and optional elements of a comprehensive plan.[79] Local governments are directed to create and adopt comprehensive plans which are sensitive to private property rights, have no undue restrictions, and leave property owners free from government action that would harm their property or constitute an inordinate burden on their property rights.[80]

Effect of the Bill

Electrical Power Plant Retirements

The bill requires that a public utility must seek approval from the PSC to retire the same types of electrical power plants that require a determination of need from the PSC. Specifically, the bill defines an electrical power plant for these purposes as any steam or solar electrical generating facility that uses any process or fuel, including nuclear materials, with a capacity of 75 megawatts or more, along with all associated facilities necessary for the continued operation of the electrical power plant, such as facilities that are physically connected to the electrical power plant and facilities that are used to connect the electrical power plant to an existing transmission network.

The bill requires a utility to provide the PSC with 30 days' notice of its intent to file for approval of a power plant retirement. The PSC must enter a final order approving, approving with conditions, or denying such a request within 180 days. The bill requires the PSC, in making its determination, to take into account many of the same factors required when determining the need for a new or expanded electrical power plant. Specifically, the PSC must take into account the impact of the proposed retirement on:

- Electric system reliability, resilience, and integrity.
- The ability to provide adequate electricity at a reasonable cost, including potential rate impacts.
- Fuel diversity and supply reliability.
- The use of domestic energy resources, including renewable energy resources.
- The state's energy policy goals established in the bill, as previously discussed.

If the PSC determines that the basis for retirement is a requirement or inducement provided in a proposed or actual federal regulation and that such retirement is inconsistent with the state's energy policy goals established in the bill, as discussed above, the bill requires the PSC to inform and provide technical support to the Attorney General, as needed, to address the inconsistency.

Development of Smart Grid Policies

The bill explicitly recognizes "the continued development and growth of markets for technologies that allow businesses and consumers to generate, store, and manage electrical energy for their own use," and that "the use of these technologies has the potential to significantly impact the electric grid and consumer choice." The bill directs the PSC to ensure that these technologies are used in a manner that

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[74] S. 368.05(1), F.S.; *see also* S. 368.021, F.S. (providing more entities subject to PSC jurisdiction).
[75] *See* ch. 25-12, F.A.C.
[76] Florida Public Service Commission, Agency Analysis of 2023 House Bill 81, p. 2 (October 26, 2023).
[77] S. 163.3167(1)(b), F.S.
[78] S. 163.3167(2), F.S.
[79] S. 163.3177, F.S.
[80] S. 163.3161(10), F.S. Specifically, such plans

maintains the integrity of the state’s electric power grid through market-based policies for consumers and public utilities and through grid improvements that ensure the safe, reliable, and cost-effective use of electricity from these technologies.

Specifically, the bill requires the PSC to develop policies that:

- Establish programs and rate mechanisms for smart energy demand response and for customer-owned generation and energy storage exported to the grid or used to enhance grid stability or resilience and reduce costs, so that financial benefits are shared among users of these technologies, public utilities, and their general body of ratepayers based on the value provided by and to each party;
- Address the modernization of the state's electric grid to ensure that the necessary infrastructure is in place to implement these programs and rate mechanisms; and
- Ensure that equipment used by utilities and consumers to implement and participate in these programs and rate mechanisms is manufactured in the United States or in countries engaged in commerce with the United States pursuant to free trade agreements.

The bill provides that these policies, including the basis for each policy and any other relevant matters, must be submitted in a report to the Legislature for consideration and, with the exception of limited pilot projects or programs, may not be implemented until approved by the Legislature.

Intrastate Natural Gas Pipeline Permitting

The bill increases the minimum length of an intrastate natural gas pipeline that requires certification under the NGTPSA from 15 miles to 100 miles. A natural gas transmission pipeline company may still obtain certification under the NGTPSA if it chooses to do so.

Land Development Regulations and Comprehensive Plans for Certain Natural Gas Facilities

The bill defines the term “resiliency facility” as a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster. Under the bill, “natural gas reserve” means a facility that is capable of storing and transporting and, when operational, actively stores and transports a supply of natural gas.

The bills states that a resiliency facility is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and in all commercial, industrial, and manufacturing districts.

Under the bill, a resiliency facility must comply with the setback and landscape criteria for other similar uses. As long as buffer and landscaping requirements do not exceed the requirements for similar uses in commercial, industrial, and manufacturing land use categories and zoning districts, a local government may adopt an ordinance specifying such requirements for resiliency facilities.

The bill provides that after July 1, 2024, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a way that would conflict with a resiliency facility’s classification as a permitted and allowable use, including, but not limited to, a nonconforming use, structure, or development.

Security and Resiliency Assessment of Electric and Natural Gas Infrastructure

The bill requires the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats and requires the PSC to consult with the Florida Digital Service in assessing cyber threats. The bill provides that all electric utilities, natural gas utilities, and natural gas pipelines operating in this state, regardless of ownership structure, shall cooperate with the PSC to provide access to all information necessary to conduct the assessment.

The bill requires the PSC, by January 1, 2025, to submit a report of its assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also contain any recommendations for potential legislative or administrative actions that may enhance the physical security or cyber security of the state's electric grid or natural gas facilities.

Provision of Transportation Fuels by Public Utilities (Sections 7 and 9)

Present Situation

Under Florida law, the term "public utility" includes providers of electricity or natural gas, with the exception of rural cooperatives, municipal utilities, special districts, and wholesale-only pipeline companies.[81] With the growing use of EVs, most public electric utilities in the state have begun to offer EV charging services through their own public charging equipment, charging equipment at customer premises, or both. These services are typically provided under pilot programs and at rates approved by the PSC. Some public natural gas utilities in Florida support natural gas vehicle fueling under specific rate schedules approved by the PSC, either through publicly accessible compressed natural gas fueling facilities or through delivery of such gas to customer premises for use by the customer to fuel vehicles (typically for fleet fueling).

Effect of the Bill

The bill provides that the PSC, without specific legislative authority, may not authorize a public utility to expand the scope of its regulated business activity to include direct sales of energy to a consumer solely for the consumer's use in powering means of transportation owned by the consumer. The bill provides that it does not apply to limited or pilot programs approved by the PSC before January 1, 2024.

The bill provides specific authority for the PSC to approve public utility programs for residential, customer-specific EV charging if the PSC determines that the rates and rate structure of the program will not adversely impact the public utility's general body of ratepayers. The bill requires that all revenues received from the program must be credited to the utility's retail ratepayers. The bill provides that it does not preclude cost recovery for EV charging programs approved by the PSC before January 1, 2024.

Energy Guidelines for Public Business (Section 2)

Present Situation

Current law requires state agencies to follow specified guidelines to promote energy efficiency and other environmental benefits when conducting public business.[82] Such guidelines require state agencies to:

- Consult the Florida Climate-Friendly Preferred Products List[83,84] when procuring products from state term contracts[85] and procuring such products if the price is comparable;[86]

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[81] S. 366.02(8), F.S.
[82] S. 286.29, F.S.
[83] The Florida Climate-Friendly Preferred Products List is developed by the Department of Management Services (DMS), which works with the Department of Environmental Protection to continually assess the list. The list identifies specific products and vendors that offer energy efficiency or other environmental benefits over competing products. *See* s. 286.29(1), F.S.
[84] The Florida Climate-Friendly Preferred Products List was last updated in January of 2021 and contains 12 recommended products, which all are categorized as either hand sanitizer or cleaning supplies. *See* Florida Climate-Friendly Preferred Products List, Department of Management Services (Jan. 2021), https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate-friendly_preferred_products_list (last visited Jan. 12, 2024).
[85] A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and is used by agencies and other eligible users. *See* ss. 287.012(28), F.S. and 287.042(2)(a), F.S
[86] S. 286.29(1), F.S.

- Contract for meeting and conference space only with facilities that have received the “Green Lodging” designation from DEP for best practices in water, energy, and wastewater efficiency standards, absent a determination from the agency head that no other viable alternative exists;[87]
- Ensure all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption and reporting compliance to the Department of Management Services (DMS);[88] and
- Use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.[89]

Additionally, when procuring new vehicles, state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan must first define the intended purpose for the vehicle and determine which statutorily listed use class[90] the vehicle is being procured for. These vehicles must be selected based on the greatest fuel efficiency available for the appropriate use class when fuel economy data is available. Exceptions may be made for emergency response vehicles in certain circumstances.[91]

Goods Produced by Child and Forced Labor

The Bureau of International Labor Affairs (ILAB) in the United States Department of Labor maintains a list of goods and the countries which they are sourced from which ILAB has reason to believe are produced by child labor or forced labor. ILAB maintains this list to raise awareness about these issues in an effort to combat them. This list also provides information to consumers by highlighting product categories that may be at risk of being produced with child labor or forced labor.[92]

Effect of the Bill

Under the bill, DMS is no longer required to maintain the Florida Climate-Friendly Preferred Products List, and state agencies are no longer required to consult the list when procuring products from state term contracts.

The bill repeals the requirement that state agencies contract for meeting and conference space only with hotels or conference facilities that have received the “Green Lodging” designation.

Under the bill, state agencies, local governments, state universities, and community colleges procuring a new vehicle no longer have to select each vehicle based on the greatest fuel efficiency available for the use class.

The bill requires DMS, in consultation with the Department of Commerce (COM) and DACS, to develop the Florida Humane Preferred Energy Products List. In developing the list, DMS must assess products currently available for purchase under state term contracts and identify specific products that appear to be largely made free from forced labor if the products contain or consist of:

- An energy storage device with a capacity of greater that one kilowatt, or
- An energy generation device with a capacity of greater than 500 kilowatts.

Under the bill, the term “forced labor” means any work performed or service rendered that is:

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[87] S. 286.29(2), F.S.
[88] S. 286.29(3), F.S.
[89] S. 286.29(5), F.S.
[90] Vehicle use classes include: state business travel, designated operator; state business travel, pool operators; construction, agricultural, or maintenance work; conveyance of passengers; conveyance of building or maintenance materials and supplies; off-road vehicle, motorcycle, or all-terrain vehicle; emergency response; or other. S. 286.29(4), F.S.
[91] S. 286.29(4), F.S.
[92] U.S. Department of Labor, Bureau of International Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor*, https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods (last visited Jan. 12, 2024).

- Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;
- Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;
- Not performed or rendered voluntarily by a person; or
- In violation of the Child Labor Law or otherwise performed or rendered through oppressive child labor.

When procuring the specified energy storage and generation devices, state agencies and political subdivisions must consult the Florida Humane Preferred Energy Products List and only purchase products from the list.

Energy Grant Programs (Sections 13-16)

Present Situation

Renewable Energy and Energy-Efficient Technologies Grant Program

The Renewable Energy and Energy-Efficient Technologies (REET) Grant Program is established within DACS to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings.[93] The REET program is no longer active.[94]

Florida Green Government Grants Act

DACS also administers the Florida Green Government Grants Act.[95] DACS is directed to adopt rules and come up with green government standards that provide for cost-efficient solutions, reducing greenhouse gas emissions, improving quality of life, and strengthening the state's economy.[96] DACS must administer the program to assist local governments, including municipalities, counties, and school districts in the development and implementation of programs that achieve green standards.[97] The Florida Green Government Grants program is no longer active.[98]

Energy Economic Zone Pilot Program

In 2009, the Legislature authorized the creation of the Energy Economic Zone Pilot Program for the purpose of developing a model area that incorporates energy-efficient land-use patterns, cultivates green economic development, encourages the generation of renewable electric energy, and promotes the manufacturing of "green" products and jobs.[99] Florida law directs the Department of Commerce,[100] in consultation with the Department of Transportation to implement the program.[101]

Qualified Energy Conservation Bond Allocation

Qualified Energy Conservation Bonds (QECBs) are taxable bonds that are issued by state or local governments to finance one or more qualified energy conservation purpose. QCEBs are federally funded, with Congress first authorizing the program in 2008. Examples of qualified projects include energy efficiency capital expenditures in public buildings, green communities, renewable energy production, and energy efficiency education campaigns.[102] Current law authorizes DACS to establish an allocation program for Florida's QCEB allocation in accordance with federal law.[103]

Effect of the Bill

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[93] S. 377.804, F.S.
[94] Email from Isabelle Garbarino, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services, RE: [External]RE: Question about grants programs (Jan. 22, 2024).
[95] S. 377.808, F.S.
[96] S. 377.808(2), F.S.
[97] *Id*.
[98] Email from Isabelle Garbarino, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services, RE: [External]RE: Question about grants programs (Jan. 22, 2024).
[99] S. 377.809(1), F.S.
[100] In 2023, the Department of Economic Opportunity was renamed as the Department of Commerce. *See* Chapter 2023-173, Laws of Fla.
[101] S. 377.809(1), F.S.
[102] Kelly Smith Burk, Florida Department of Agriculture and Consumer Services, *Qualified Energy Efficiency Conservation Bonds (QCEB) Formula Allocations to Large Local Jurisdiction* (Apr. 23, 2015), https://ccmedia.fdacs.gov/content/download/60128/file/FDACS%27_Memorandum_regarding_Qualified_Energy_Conservation_Bond_Formula_Allocations_to_Large_Local_Governments.pdf (last visited Jan. 25, 2024).
[103] S. 377.816, F.S.

The bill repeals the REET Grant Program, the Florida Green Government Grants Act, the Energy Economic Zone Pilot Program, and all provisions related to Qualified Energy Conservation Bonds.

Under the bill, no new applications, certifications, or allocations may be approved; no new letters of certification may be issued; no new contracts or agreements may be executed; and no new awards may be made for the repealed programs. All certifications or allocations issued under such programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. Any existing contract or agreement authorized under any of these programs shall continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, further modifications, extensions, or waivers may not be made or granted relating to such contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of the qualifying project.

Consumer Choice of Energy Resources (Sections 5, 6, 18)

Present Situation

Services on Florida's Turnpike System

Florida's Turnpike, extending from Lake County to Miami Gardens, is operated by the Florida Department of Transportation (DOT), and is used daily by more than three million customers.[104] The DOT is permitted to enter into contracts or licenses with any person for the sale of services or products or business opportunities on the turnpike.[105] Services, business opportunities, and products authorized to be sold include, but are not limited to[106]:

- Motor fuel;
- Vehicle towing and maintenance services;
- Food with attendant nonalcoholic beverages;
- Lodging, meeting rooms, and other business services opportunities;
- Advertising and other promotional opportunities;
- State lottery tickets sold by authorized retailers;
- Games and amusements that operate by the application of skill;
- Florida citrus, goods promoting the state, or handmade goods produced within the state; and
- Travel information, tickets, reservations, or other related services.

Vendors are incentivized to provide services, business opportunities, and products on the turnpike as anyone the DOT has a contract or license with to provide these services, business opportunities, and products is not required to pay any commercial rental tax imposed under s. 212.031, F.S., on any capital improvements constructed, improved, acquired, installed, or used for such purposes.[107]

Community Development Districts

Community development districts (CDDs) are a type of independent special district intended to provide urban community services in a cost-effective manner by managing and financing the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.[108] As of January 18, 2024, there were 961 active CDDs in Florida.[109]

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[104] Florida's Turnpike, https://floridasturnpike.com/ (last visited Jan. 13, 2024).
[105] S. 338.234(1), F.S.
[106] S. 338.234(1), F.S.
[107] S. 338.234(2), F.S.
[108] S. 190.002(1)(a), F.S.
[109] Dept. of Commerce, Special District Accountability Program, *Official List of Special Districts*, available at https://specialdistrictreports.floridajobs.org/OfficialList/CustomList (last visited Jan. 26, 2024).

Each CDD is governed by a five-member board elected by the landowners of the district on a one-acre, one-vote basis.[110] Board members serve four-year terms, except some initial board members serve a two-year term for the purpose of creating staggered terms.[111] After the sixth year (for districts of up to 5,000 acres) or the 10th year (for districts exceeding 5,000 acres or for a compact, urban, mixed-use district[112]) following the CDD's creation, each member of the board is subject to election by the electors of the district at the conclusion of their term. However, this transition does not occur if the district has fewer than 250 qualified electors (for districts of up to 5,000 acres) or 500 qualified electors (for districts exceeding 5,000 acres or for a compact, urban, mixed-use district).[113]

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[114]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated under chapter 720, F.S., the Homeowners' Association Act (HOA Act). An HOA is administered by an elected board of directors (board). The powers and duties of an HOA include the powers and duties provided in the HOA Act and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[115]

An HOA must be a Florida corporation, and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

HOA governing documents may not:

- Prohibit a homeowner from displaying up to two portable, removable flags in a respectful manner, consistent with the requirements for the United States flag.[116]
- Prohibit any property owner from implementing Florida-friendly landscaping[117] on his or her land or create any requirement or limitation in conflict with any provision of part II of Chapter 373, F.S., regarding consumptive uses of water or a water shortages order.[118]
- Prohibit solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement.[119]

Additionally, HOAs may not restrict the installation, display, and storage of any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless the item is prohibited by general law or local ordinance. Such items include, but are not limited to:[120]

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[110] S. 190.006(2), F.S.
[111] S. 190.006(1), F.S.
[112] S. 190.006(3)(a)2.a., F.S. A "compact, urban, mixed-use district" is a district located within a municipality and a CRA that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units. S, 190.003(7), F.S.
[113] S. 190.006(3)(a)2.b., F.S.
[114] S. 720.301(9), F.S.
[115] *See generally* ch. 720, F.S.
[116] S. 720.3075(3), F.S.
[117] Section 373.185, F.S., defines "Florida-friendly landscaping" as quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.
[118] S. 720.3075(4), F.S.
[119] S. 163.04(2), F.S.

- Artificial turf;
- Boats;
- Flags; and
- Recreational vehicles.

Effect of the Bill

Fueling Services on Florida's Turnpike System

The bill requires DOT, if it has a preexisting contract or license for the sale of motor fuel or charging services at a service station along the turnpike, to offer potential access to vendors of alternative motor vehicle fuels and repowering stations along the turnpike system, including, but not limited to:

- Hydrogen;
- Compressed natural gas; and
- Liquefied natural gas.

The bill allows vendors of hydrogen, compressed natural gas, and liquefied natural gas to have the opportunity to place fueling stations along the turnpike without being preempted by previously entered contracts or licenses with established motor fuel or charging service vendors. As consumer demand for these additional fueling options grows, the bill may provide turnpike users with access to these options.

Vendors of hydrogen, compressed natural gas, and liquefied natural gas will not be required to pay any commercial tax imposed under s. 212.032, F.S.

Prohibition of CDD Energy Use Restrictions

The bill provides that development district resolutions, ordinances, rules, codes, or policies, may not take any action that restricts or prohibits, or has the effect of restricting or prohibiting, certain types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill also provides that development district resolutions, ordinances, rules, codes, or policies, may not take any action that restricts or prohibits, or have the effect of restricting or prohibiting, the use of any appliance,[121] including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by the entities listed above.

Prohibition of HOA Energy Use Restrictions

The bill provides that HOA documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customer within the HOA that these entities are authorized to serve:

- Investor-owned electric utilities;

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[120] S. 720.3045, F.S.

[121] The bill defines the term "appliance" as a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill also provides that HOA declarations of covenants, articles of incorporation, or bylaws may not preclude, the use of any appliance,[122] including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by the entities listed above.

EV Batteries (Sections 3 and 4)

Present Situation

EV Battery Recycling

Industry analysts predict that at least 145 million EVs will be on the road by 2030.[123] EVs run off of large-scale lithium-ion batteries in which a main pack holds several modules, each of which is constructed from numerous smaller cells.[124] Scientists and policy-makers are working to ensure that EV batteries being sold today can be recycled in 2030 and beyond, when thousands of batteries will reach the end of their lives every day.[125]

Certain EV battery components are easy to recycle, however, breaking down the cells and purifying the recyclable elements is more difficult. Despite this difficulty, the EV battery recycling business is growing, with dozens of companies like Redwood Materials starting up in various parts of the battery recycling industry.[126] Recycled elements derived from old EV batteries are also attractive because U.S. auto manufacturers can purchase elements for new EV batteries directly from recyclers in the U.S. instead of importing these elements from other countries.

To encourage EV battery recycling, the state of California partnered with Redwood Materials and large auto manufacturers to help source EV batteries for recycling.[127] Further, the 2022 Inflation Reduction Act includes the Advanced Manufacturing Production Credit, which grants 10 years' worth of tax credits for the domestic manufacturing of battery cells and modules, creating a larger domestic market for EV battery materials.[128]

Effect of the Bill

EV Battery Deposit Program

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[122] The bill defines the term "appliance" as a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.
[123] Ian Morse, American Association for the Advancement of Science, *A Dead Battery Dilemma* (May 20, 2021), https://www.science.org/content/article/millions-electric-cars-are-coming-what-happens-all-dead-batteries (last visited Jan. 22, 2024).
[124] *Id*.
[125] *Id*.
[126] John Voelcker, Car and Driver, *Everything You Need to Know about EV Battery Disposal* (Jun. 10, 2023), https://www.caranddriver.com/features/a44022888/electric-car-battery-recycling/ (last visited Jan. 22, 2024).
[127] Redwood Materials, *One year update: Redwood's California EV Battery Recycling Program* (Mar. 2, 2023), https://www.redwoodmaterials.com/news/update-california-ev-battery-recycling-program/ (last visited Jan. 22, 2024).
[128] Elizabeth Napolitano, CBS News*, Domestic EV battery production is surging ahead, thanks to small clause in Inflation Reduction Act* (July 25, 2023), https://www.cbsnews.com/news/electric-car-batteries-inflation-reduction-act-us-manufacturing/ (last visited Jan. 22, 2024).

Effective July 1, 2025, the bill creates the Electric Vehicle Battery Deposit Program within the Department of Highway Safety and Motor Vehicles (DHSMV), directing DHSMV, in consultation with industry experts, to develop and implement the program.

Under this program, each motor vehicle dealer[129] which sells, at retail, an electric vehicle not previously registered in the state and each motor vehicle repair shop[130] which sells an EV battery at retail in the state must collect a deposit on the EV battery. The deposit must be based on the EV battery's gross capacity as measured by kilowatt hours (kWh):

- For an electric vehicle battery with a gross capacity less than or equal to 50 kWh, the deposit is $500.
- For an electric vehicle battery with a gross capacity greater than 50 kWh but less than or equal to 100 kWh, the deposit is $750.
- For an electric vehicle battery with a capacity greater than 100 kWh, the deposit is $1,000.

The bill requires DHSMV to designate a means by which the deposit is held until it can be refunded to the titleholder of an EV when the titleholder presents proof of relinquishment or sale of the EV or EV battery to a motor vehicle dealer or motor vehicle repair shop. Titleholders must also be able to recover the deposit under to program upon providing proof of relocation to another state, sale of the electric vehicle to an out-of-state resident, or theft of the EV or EV battery.

Under the bill, in order to assist with the costs associated with extinguishing an EV battery fire, a fire department that handles such a fire may claim the EV battery deposit that the titleholder would otherwise be entitled to receive.

The bill requires DHSMV to prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that:

- Specifies the terms of the EV Battery Deposit Program.
- Identifies any implementation issues.
- Makes recommendations on any further legislation that may be necessary.
- Makes recommendations on how the state may further facilitate proper electric vehicle battery disposal and recycling.

Developing Energy Technologies (Sections 21 & 22)

<u>Present Situation</u>

Nuclear Technologies

Historically, nuclear power generation in the United States has relied on large light water reactors (LWRs) which were first commercialized in the 1950s.[131] Following the passage of the 2005 Energy Policy Act, federal loan guarantees along with state financing mechanisms began to spur activity in nuclear reactor development throughout states.[132] This activity slowed after public sentiment turned against nuclear power due to safety concerns related to the 2011 disaster at the Fukushima Daiichi nuclear plant in Japan and after the economics of power generation changed due to falling natural gas

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[129] Generally, Florida law defines a motor vehicle dealer as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement. *See* s. 320.22(1)(c), F.S.

[130] Section 559.903, F.S. defines a motor vehicle repair shop as any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work. Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

[131] MARK HOLT, CONG. RSCH. SERV., R45706, ADVANCED NUCLEAR REACTORS: TECHNOLOGY OVERVIEW AND CURRENT ISSUES (2023) [hereinafter CRS Report, Advanced Nuclear Reactors].

[132] Daniel Shea, *Nuclear Policy in the States: A National Review*, Journal of Critical Infrastructure Policy, Fall/Winter 2023, at 14-15 [hereinafter Shea, Nuclear Policy in the States].

prices.[133] However, there has been increasing interest in “advanced nuclear reactors”[134] and “small modular reactors”[135] recently.[136] Advanced nuclear reactors are believed to improve upon earlier generations of reactors in areas of: cost, safety, security, waste management, and versatility.[137]

Nuclear energy is “carbon-free” as it does not directly produce carbon dioxide or other greenhouse gases.[138] Nuclear power provides more than half of the carbon-free electricity produced in the U.S.[139] Nuclear energy currently constitutes 8% of electric generating capacity in the United States, yet generates 18% of the total electricity in the country.[140] Nuclear energy generates about 13% of total electricity generation in Florida.[141] This is because most nuclear plants operate around the clock and generate at maximum capacity around 93% of the time – nearly twice the capacity factor of resources like coal and natural gas, and triple that of wind and solar.[142]

State legislation related to nuclear energy has increased over the past decades.[143] These policies address different vantage points; some states have enacted policies to insulate their existing fleet of reactors from premature closure, while others have enacted policies to develop new nuclear capacity.[144] Many states have directed the conduct of studies on advanced nuclear reactors.[145]

Hydrogen for Transportation

Hydrogen powered vehicles use hydrogen as a fuel source and produce no harmful tailpipe emissions as they only emit water vapor and warm air.[146] Currently, hydrogen powered vehicles are only available in select markets like southern and northern California.[147] This is because California is the only state which has a hydrogen fueling infrastructure, with over 60 public stations.[148]

California implemented its hydrogen fueling infrastructure with its “Hydrogen Highway Network” (Network) in 2004, which was later implemented by the legislature in 2005. The Network was designed with the desire to expand zero-emission hydrogen fuel cell electric cars by expanding California’s network of hydrogen refueling stations.[149] While hydrogen powered vehicles are environmentally

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[133] *Id*. at 15.
[134] An advanced nuclear reactor is a fission reactor “with significant improvements compared to reactors operating on the date of enactment” or a reactor using nuclear fusion. 42 U.S.C § 16271(b)(1).
[135] Small modular reactors are a form of advanced nuclear reactor with an electric generating capacity of 300 MW. Advanced nuclear reactors can be configured into small modular reactors. CRS Report, Advanced Nuclear Reactors, *supra* note 126, at 3-4.
[136] *Id*. at *Introduction*.
[137] CRS Report, Advanced Nuclear Reactors, *supra* note 126, at 3.
[138] Anne White & Aaron Krol, *Nuclear Energy*, Climate Portal (Oct. 14, 2020), https://climate.mit.edu/explainers/nuclear-energy (last visited Jan. 13, 2024).
[139] *Id*.
[140] U.S. Energy Information Administration, *U.S. energy facts explained*, https://www.eia.gov/energyexplained/us-energy-facts/data-and-statistics.php (last visited Jan. 12, 2024).
[141] U.S. Energy Information Administration, *Florida’s electricity generation mix is changing*, (Aug. 24, 2023), https://www.eia.gov/todayinenergy/detail.php?id=60221 (last visited Jan. 19, 2024).
[142] Shea, Nuclear Policy in the States, *supra* note 28, at 16.
[143] Daniel Shea, *Nuclear Power and the Clean Energy Transition* (Apr. 6, 2023), https://www.ncsl.org/energy/nuclear-power-and-the-clean-energy-transition (last visited Jan. 13, 2024) (noting an increase from 74 bills considered in 2016 to more than 160 bills considered in 2022 in relation to nuclear energy).
[144] *Id*.
[145] *See e.g.*, MICH. COMP. LAWS § 460.10hh (2022); Montana Senate Joint Resolution 3 (2021); Penn. HR 238 (2022).
[146] United States Department of Energy, *Fuel Cell Electric Vehicles*, https://afdc.energy.gov/vehicles/fuel_cell.html (last visited Jan. 13, 2024).
[147] United States Department of Energy, *Hydrogen Fuel Cell Electric Vehicle Availability*, https://afdc.energy.gov/vehicles/fuel_cell_availability.html (last visited Jan. 13, 2024).
[148] United States Department of Energy, *Hydrogen Fueling Station Locations by State*, https://afdc.energy.gov/data/10370 (last visited Jan. 13, 2024).
[149] California Energy Commission, *Hydrogen Vehicles & Refueling Infrastructure*, https://www.energy.ca.gov/programs-and-topics/programs/clean-transportation-program/clean-transportation-funding-areas-1 (last visited Jan. 13, 2014).

beneficial, issues arise from the fueling infrastructure. Such issues, made apparent by the Network, include[150]:

- Vehicles becoming stranded because of lack of fueling stations;
- Frequent station malfunctions/shortages; and
- High state subsidies per fueling station.

In October 2023, the U.S. Department of Energy announced $7 billion in federal funding under the Bipartisan Infrastructure Law to fund seven Regional Clean Hydrogen Hubs. The purpose of these investments is to "accelerate the commercial-scale deployment of clean hydrogen helping to generate clean, dispatchable power, create a new form of energy storage, and decarbonize heavy industry and transportation."[151]

Effect of the Bill

Evaluation of Advanced Nuclear Technologies

The bill requires the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including SMRs, to meet the electrical power needs of the state. The bill also requires the PSC to research means to encourage installation and use of nuclear technologies at military installations in the state.

By January 1, 2025, the PSC must prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing its findings and recommendations for potential legislative or administrative actions that may enhance the use of advanced nuclear technologies in a manner consistent with the state energy policy goals established by the bill.

Evaluation of Hydrogen Fueling Infrastructure

The bill requires DOT, along with DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system.

By January 1, 2025, DOT must prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing its findings and any recommendations for potential legislative or administrative actions concerning the development of hydrogen fueling infrastructure in manner consistent with the state energy policy goals established by the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.3210, F.S., relating to natural gas resiliency and reliability infrastructure.

Section 2. Amends s. 286.29, F.S., relating to energy guidelines for public business.

Section 3. Creates s. 320.97, F.S., relating to an electric vehicle battery deposit program.

Section 4. Directs the Department of Highway Safety and Motor Vehicles to prepare and submit a report.

Section 5. Amends s. 338.234, F.S., relating to granting concessions or selling along the turnpike system; immunity from taxation.

Section 6. Amends s. 366.032, F.S., relating to preemptions over utility service restrictions.

[150] Evan Halper, *Is California's 'Hydrogen Highway' a road to nowhere?*, L.A. Times, Aug. 10, 2021.
[151] U.S. DOE, Office of Clean Energy Demonstrations, *Regional Clean Hydrogen Hubs Selections for Award Negotiations*, https://www.energy.gov/oced/regional-clean-hydrogen-hubs-selections-award-negotiations (last visited Jan. 26, 2024).

Section 7. Amends s. 366.04, F.S., relating to jurisdiction of the Public Service Commission.

Section 8. Creates s. 366.057, F.S., relating to retirement of electric power plants.

Section 9. Amends s. 366.94, F.S., relating to electric vehicle charging.

Section 10. Amends s. 377.601, F.S., relating to legislative intent.

Section 11. Amends s. 377.6015, F.S., relating to the Department of Agriculture and Consumer Services; powers and duties.

Section 12. Amends s. 377.703, F.S., relating to additional functions of the Department of Agriculture and Consumer Services.

Section 13. Repeals energy-related grants programs.

Section 14. Provides construction.

Section 15. Amends s. 288.9606, F.S., relating to issue of revenue bonds.

Section 16. Amends s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions.

Section 17. Amends s. 403.9405, F.S. relating to applicability; certification; exemption; notice of intent under the Natural Gas Transmission Pipeline Siting Act.

Section 18. Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.

Section 19. Directs the Public Service Commission to develop smart grid policies.

Section 20. Directs the Public Service Commission to conduct a security and resiliency assessment.

Section 21. Directs the Public Service Commission to study and evaluate advanced nuclear technologies.

Section 22. Directs the Department of Transportation to study and evaluate hydrogen fueling infrastructure.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a negative impact on state government expenditures because it imposes the following new requirements for specified state agencies, which may require the expenditure of resources:

   - PSC review of certain power plant retirements, including provision of support to the Attorney General in certain circumstances;
   - PSC development of smart grid policies;
   - PSC assessment of the security and resiliency of the state's electric grid and natural gas facilities;
   - DMS development of a Florida Humane Preferred Energy Products List;
   - DOT provision of potential access to vendors of certain alternative motor vehicle fuels and repowering stations along the turnpike system;

- DHSMV development of an EV Battery Deposit Program and related reporting;
- PSC study and evaluation of advanced nuclear power technologies; and
- DOT study and evaluation of the potential development of hydrogen fueling infrastructure.

In some cases, affected agencies may be able to satisfy all or some of these requirements with existing resources. Further, the affected agencies may see expenditures offset to some degree by potential savings, and other agencies may see reduced expenditures, related to:

- Elimination of certain state purchasing requirements; and
- Expansion of the types of intrastate natural gas pipelines that are exempt from siting under the Natural Gas Transmission Pipeline Siting Act.

The impact of requiring state agencies to purchase certain energy-related items from a new Florida Humane Preferred Energy Products List, as required by the bill, is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The impact of requiring political subdivisions of the state to purchase certain energy-related items from a new Florida Humane Preferred Energy Products List, as required by the bill, is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill refocuses state energy policy on promoting and ensuring a cost-effective, reliable, resilient, safe, diverse, and U.S. sourced energy supply and makes specific changes in law to meet these policy goals. The bill also attempts to streamline certain regulatory requirements to strengthen the energy grid, increase energy-related modernization to respond to changing market forces, and increase market-based policies within Florida's various energy sectors. To the extent these changes succeed, there will be direct positive impacts on the economic well-being of Florida's businesses and consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This 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:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DHSMV to adopt rules to implement an EV Battery Deposit Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires DMS, in developing a Florida Humane Preferred Energy Products List, to assess products currently available for purchase under state term contracts that contain or consist of an energy storage device with a capacity of greater than one *kilowatt* or that contain or consist of an energy generation device with a capacity of greater than 500 *kilowatts*. These capacity measures should be shown in *kilowatt-hours.*

The bill requires the PSC to submit a report containing proposed smart grid policies by January 1, 2024. This date is erroneous, as it has already passed, and should be amended.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to energy resources; creating s.
3 163.3210, F.S.; providing legislative intent;
4 providing definitions; allowing resiliency facilities
5 in certain land use categories in local government
6 comprehensive plans and specified districts if certain
7 criteria are met; allowing local governments to adopt
8 ordinances for resiliency facilities if certain
9 requirements are met; prohibiting amendments to a
10 local government's comprehensive plan, land use map,
11 zoning districts, or land development regulations in a
12 manner that would conflict with resiliency facility
13 classification after a specified date; amending s.
14 286.29, F.S.; revising energy guidelines for public
15 businesses; eliminating the requirement that the
16 Department of Management Services develop and maintain
17 the Florida Climate-Friendly Preferred Products List;
18 eliminating the requirement that state agencies
19 contract for meeting and conference space only with
20 facilities that have a Green Lodging designations;
21 eliminating the requirement that state agencies, state
22 universities, community colleges, and local
23 governments that procure new vehicles under a state
24 purchasing plan select certain vehicles under a
25 specified circumstance; requiring the Department of

26 Management Services to develop a Florida Humane
27 Preferred Energy Products List in consultation with
28 the Department of Commerce and the Department of
29 Agriculture and Consumer Services; providing for
30 assessment considerations in developing the list;
31 defining the term "forced labor"; requiring state
32 agencies and political subdivisions that procure
33 energy products from state term contracts to consult
34 the list and purchase or procure such products;
35 prohibiting state agencies and political subdivisions
36 from purchasing or procuring products not included in
37 the list; creating 320.97, F.S.; providing legislative
38 findings; creating the Electric Vehicle Battery
39 Deposit Program within the Department of Highway
40 Safety and Motor Vehicles; providing the requirements
41 of the program; allowing the department to adopt
42 rules; providing definitions; requiring the Department
43 of Highway Safety and Motor Vehicles to prepare and
44 submit a report to the Governor and the Legislature as
45 it relates to the Electric Vehicle Battery Deposit
46 Program by a specified date; amending s. 338.234,
47 F.S.; requiring the Department of Highway Safety and
48 Motor Vehicles to offer access to vendors of certain
49 fuels or services access to the turnpike system in
50 certain instances; amending s. 366.032, F.S.;

51 including development districts as a type of political
52 subdivision for purposes of preemption over utility
53 service restrictions; amending s. 366.04, F.S.;
54 revising the jurisdiction of the Florida Public
55 Service Commission; creating s. 366.057, F.S.;
56 defining the term "electrical power plant"; requiring
57 a public utility to petition the Florida Public
58 Service Commission within a specified time before
59 retiring an electrical power plant; requiring the
60 commission to enter a final order in response to the
61 petition within a specified time; setting forth what
62 the commission must take into consideration in
63 entering its final order; requiring the commission to
64 notify the Attorney General of the retirement of an
65 electrical power plant in specified circumstances;
66 amending s. 366.94, F.S.; removing terminology;
67 conforming provisions to changes made by the act;
68 authorizing the commission upon a specified date to
69 approve voluntary public utility programs for electric
70 vehicle charging if certain requirements are met;
71 requiring that all revenues received from such program
72 be credited to the public utility's general body of
73 ratepayers; providing applicability; amending s.
74 377.601, F.S.; revising legislative intent; amending
75 s. 377.6015, F.S.; revising the powers and duties of

76 the department; conforming provisions to changes made
77 by the act; amending s. 377.703, F.S.; revising
78 additional functions of the department relating to
79 energy resources; conforming provisions to changes
80 made by the act; repealing s. 377.801, F.S., relating
81 to the Florida Energy and Climate Protection Act;
82 repealing s. 377.802, F.S., relating to the purpose of
83 the act; repealing s. 377.803, F.S., relating to
84 definitions under the act; repealing s. 377.804, F.S.,
85 relating to the Renewable Energy and Energy-Efficient
86 Technologies Grants Program; repealing s. 377.808,
87 F.S., relating to the Florida Green Government Grants
88 Act; repealing s. 377.809, F.S., relating to the
89 Energy Economic Zone Pilot Program; repealing s.
90 377.816, F.S., relating to the Qualified Energy
91 Conservation Bond Allocation Program; prohibiting the
92 approval of new or additional applications,
93 certifications, or allocations under such programs;
94 prohibiting new contracts, agreements, and awards
95 under such programs; rescinding all certifications or
96 allocations issued under such programs; providing an
97 exception; providing application relating to existing
98 contracts or agreements under such programs; amending
99 ss. 288.9606 and 380.0651, F.S.; conforming provisions
100 to changes made by the act; amending s. 403.9405,

101 F.S.; revising the applicability of the Natural Gas
102 Transmission Pipeline Siting Act; amending s.
103 720.3075, F.S.; prohibiting certain homeowners'
104 association documents from precluding certain types or
105 fuel sources of energy production and the use of
106 certain appliances; directing the commission to ensure
107 that electrical energy technologies are used in a
108 specified manner through market-based policies and
109 electric grid improvements; requiring the commission
110 to develop specified policies for smart energy;
111 requiring that such policies also address the
112 modernization of the state's electric grid and ensure
113 that equipment used is manufactured in the United
114 States or countries engaged in commerce within the
115 United States pursuant to free trade agreements;
116 requiring the commission by a specified date to submit
117 a report to the Legislature that contains such
118 established policies; requiring the commission to
119 conduct an assessment of the security and resiliency
120 of the state's electric grid and natural gas
121 facilities against physical threats and cyber threats;
122 requiring the commission to consult with the Florida
123 Digital Service; requiring cooperation from all
124 operating facilities in the state relating to such
125 assessment; requiring the commission to submit by a

126 specified date a report of such assessment to the
127 Governor and the Legislature; providing additional
128 content requirements for such report; requiring the
129 commission to study and evaluate the technical and
130 economic feasibility of using advanced nuclear power
131 technologies to meet the electrical power needs of the
132 state; requiring the commission to submit by a
133 specified date a report to the Governor and the
134 Legislature that contains its findings and any
135 additional recommendations for potential legislative
136 or administrative actions; requiring the Department of
137 Transportation, in consultation with the Office of
138 Energy within the Department of Agriculture and
139 Consumer Services, to study and evaluate the potential
140 development of hydrogen fueling infrastructure to
141 support hydrogen-powered vehicles; requiring the
142 department to submit by a specified date a report to
143 the Governor and the Legislature that contains its
144 findings and recommendations for specified actions
145 that may accommodate the future development of
146 hydrogen fueling infrastructure; providing effective
147 dates.
148
149 Be It Enacted by the Legislature of the State of Florida:
150

151 Section 1. Section 163.3210, Florida Statutes, is created
152 to read:
153 163.3210 Natural gas resiliency and reliability
154 infrastructure.-
155 (1) It is the intent of the Legislature to maintain,
156 encourage, and ensure adequate and reliable fuel sources for
157 public utilities. The resiliency and reliability of fuel sources
158 for public utilities is critical to the state's economy; the
159 ability of the state to recover from natural disasters; and to
160 the health, safety, welfare, and quality of life of the
161 residents of the state.
162 (2) As used in this section, the term:
163 (a) "Natural gas" means all forms of fuel commonly or
164 commercially known or sold as natural gas, including compressed
165 natural gas and liquefied natural gas.
166 (b) "Natural gas reserve" means a facility that is capable
167 of storing and transporting and, when operational, actively
168 stores and transports a supply of natural gas.
169 (c) "Public utility" has the same meaning as defined in s.
170 366.02.
171 (d) "Resiliency facility" means a facility owned and
172 operated by a public utility for the purposes of assembling,
173 creating, holding, securing, or deploying natural gas reserves
174 for temporary use during a system outage or natural disaster.
175 (3) A resiliency facility is a permitted use in all

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176 commercial, industrial, and manufacturing land use categories in
177 a local government comprehensive plan and all commercial,
178 industrial, and manufacturing districts. A resiliency facility
179 must comply with the setback and landscape criteria for other
180 similar uses. A local government may adopt an ordinance
181 specifying buffer and landscaping requirements for resiliency
182 facilities, provided such requirements do not exceed the
183 requirements for similar uses involving the construction of
184 other facilities that are permitted uses in commercial,
185 industrial, and manufacturing land use categories and zoning
186 districts.
187 (4) After July 1, 2024, a local government may not amend
188 its comprehensive plan, land use map, zoning districts, or land
189 development regulations in a manner that would conflict with a
190 resiliency facility's classification as a permitted and
191 allowable use, including, but not limited to, an amendment that
192 causes a resiliency facility to be a nonconforming use,
193 structure, or development.
194 Section 2. Section 286.29, Florida Statutes, is amended to
195 read:
196 286.29 Energy guidelines for ~~Climate-friendly~~ public
197 business.~~—The Legislature recognizes the importance of~~
198 ~~leadership by state government in the area of energy efficiency~~
199 ~~and in reducing the greenhouse gas emissions of state government~~
200 ~~operations. The following shall pertain to all state agencies~~

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201 ~~when conducting public business:~~
202 ~~(1) The Department of Management Services shall develop~~
203 ~~the "Florida Climate-Friendly Preferred Products List." In~~
204 ~~maintaining that list, the department, in consultation with the~~
205 ~~Department of Environmental Protection, shall continually assess~~
206 ~~products currently available for purchase under state term~~
207 ~~contracts to identify specific products and vendors that offer~~
208 ~~clear energy efficiency or other environmental benefits over~~
209 ~~competing products. When procuring products from state term~~
210 ~~contracts, state agencies shall first consult the Florida~~
211 ~~Climate-Friendly Preferred Products List and procure such~~
212 ~~products if the price is comparable.~~
213 ~~(2) State agencies shall contract for meeting and~~
214 ~~conference space only with hotels or conference facilities that~~
215 ~~have received the "Green Lodging" designation from the~~
216 ~~Department of Environmental Protection for best practices in~~
217 ~~water, energy, and waste efficiency standards, unless the~~
218 ~~responsible state agency head makes a determination that no~~
219 ~~other viable alternative exists.~~
220 (1)~~(3)~~ Each state agency shall ensure that all maintained
221 vehicles meet minimum maintenance schedules shown to reduce fuel
222 consumption, which include:
223 (a) Ensuring appropriate tire pressures and tread depth.~~;~~
224 (b) Replacing fuel filters and emission filters at
225 recommended intervals.~~;~~

226 (c) Using proper motor oils.~~; and~~
227 (d) Performing timely motor maintenance.
228
229 Each state agency shall measure and report compliance to the
230 Department of Management Services through the Equipment
231 Management Information System database.
232 ~~(4) When procuring new vehicles, all state agencies, state~~
233 ~~universities, community colleges, and local governments that~~
234 ~~purchase vehicles under a state purchasing plan shall first~~
235 ~~define the intended purpose for the vehicle and determine which~~
236 ~~of the following use classes for which the vehicle is being~~
237 ~~procured:~~
238 ~~(a) State business travel, designated operator;~~
239 ~~(b) State business travel, pool operators;~~
240 ~~(c) Construction, agricultural, or maintenance work;~~
241 ~~(d) Conveyance of passengers;~~
242 ~~(e) Conveyance of building or maintenance materials and~~
243 ~~supplies;~~
244 ~~(f) Off-road vehicle, motorcycle, or all-terrain vehicle;~~
245 ~~(g) Emergency response; or~~
246 ~~(h) Other.~~
247
248 ~~Vehicles described in paragraphs (a) through (h), when being~~
249 ~~processed for purchase or leasing agreements, must be selected~~
250 ~~for the greatest fuel efficiency available for a given use class~~

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251 ~~when fuel economy data are available. Exceptions may be made for~~
252 ~~individual vehicles in paragraph (g) when accompanied, during~~
253 ~~the procurement process, by documentation indicating that the~~
254 ~~operator or operators will exclusively be emergency first~~
255 ~~responders or have special documented need for exceptional~~
256 ~~vehicle performance characteristics. Any request for an~~
257 ~~exception must be approved by the purchasing agency head and any~~
258 ~~exceptional performance characteristics denoted as a part of the~~
259 ~~procurement process prior to purchase.~~
260 (2)~~(5)~~ All state agencies shall use ethanol and biodiesel
261 blended fuels when available. State agencies administering
262 central fueling operations for state-owned vehicles shall
263 procure biofuels for fleet needs to the greatest extent
264 practicable.
265 (3)(a) The Department of Management Services shall, in
266 consultation with the Department of Commerce and the Department
267 of Agriculture and Consumer Services, develop a Florida Humane
268 Preferred Energy Products List. In developing the list, the
269 department must assess products currently available for purchase
270 under state term contracts that contain or consist of an energy
271 storage device with a capacity of greater than one kilowatt or
272 that contain or consist of an energy generation device with a
273 capacity of greater than 500 kilowatts and identify specific
274 products that appear to be largely made free from forced labor,
275 irrespective of the age of the worker. For purposes of this

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276 subsection, the term "forced labor" means any work performed or
277 service rendered that is:
278 1. Obtained by intimidation, fraud, or coercion, including
279 by threat of serious bodily harm to, or physical restraint
280 against, a person, by means of a scheme intended to cause the
281 person to believe that if he or she does not perform such labor
282 or render such service, the person will suffer serious bodily
283 harm or physical restraint, or by means of the abuse or
284 threatened abuse of law or the legal process;
285 2. Imposed on the basis of a characteristic that has been
286 held by the United States Supreme Court or the Florida Supreme
287 Court to be protected against discrimination under the
288 Fourteenth Amendment to the United States Constitution or under
289 s. 2, Art. I of the State Constitution, including race, color,
290 national origin, religion, gender, or physical disability;
291 3. Not performed or rendered voluntarily by a person; or
292 4. In violation of the Child Labor Law or otherwise
293 performed or rendered through oppressive child labor.
294 (b) When procuring the types of energy products described
295 in paragraph (a) from state term contracts, state agencies and
296 political subdivisions shall first consult the Florida Humane
297 Preferred Energy Products List and may not purchase or procure
298 products not included in the list.
299 Section 3. Effective July 1, 2025, section 320.97, Florida
300 Statutes, is created to read:

301 320.97 Electric vehicle battery deposit program.—
302 (1) The Legislature finds that the state has a compelling
303 interest in facilitating the proper disposal and recycling of
304 electric vehicle batteries at the end of their useful lives.
305 (2) The Electric Vehicle Battery Deposit Program is
306 created within the department.
307 (a) The department, in consultation with industry experts,
308 shall develop and implement the program to provide for the
309 collection of a deposit on electric vehicle batteries by a:
310 1. Motor vehicle dealer, as defined in s. 320.27(1)(c),
311 which sells at retail an electric vehicle not previously
312 registered in the state; or
313 2. Motor vehicle repair shop, as defined in s. 559.903,
314 which sells an electric vehicle battery at retail in the state,
315
316 based on the electric vehicle battery's gross capacity as
317 measured in kilowatt hours (kWh).
318 (b) For purposes of paragraph (a), the deposit amount is:
319 1. For an electric vehicle battery with a gross capacity
320 less than or equal to 50 kWh: $500.
321 2. For an electric vehicle battery with a gross capacity
322 greater than 50 kWh but less than or equal to 100 kWh: $750.
323 3. For an electric vehicle battery with a capacity greater
324 than 100 kWh: $1,000.
325 (c) For purposes of paragraph (a), the department must

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326 designate the means by which the deposit must be held until it
327 can be refunded to the titleholder of an electric vehicle in
328 which the battery is installed upon proof of the relinquishment
329 or sale of the electric vehicle or electric vehicle battery to a
330 motor vehicle dealer or motor vehicle repair shop.
331 (d) The program shall allow a fire department which
332 handles an electric vehicle battery fire to claim the deposit
333 that the titleholder of the electric vehicle in which the
334 battery fire occurred would otherwise be entitled to receive
335 under the program in order to assist with additional costs
336 associated with extinguishing electric vehicle battery fires.
337 (e) The program shall provide a means by which the
338 titleholder of the electric vehicle may recover the deposit
339 under the program upon providing proof of relocation to another
340 state, sale of the electric vehicle to an out-of-state resident,
341 or theft of the electric vehicle or electric vehicle battery.
342 (3) The department may adopt rules to implement this
343 section.
344 (4) For the purposes of this section, the term:
345 (a) "Electric vehicle" has the same meaning as provided in
346 s. 320.01(36).
347 (b) "Electric vehicle battery" means a rechargeable
348 storage battery which is the exclusive source of power to an
349 electric motor in an electric vehicle.
350 (c) "Motor vehicle" has the same meaning as provided in s.

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351 320.01(1).
352 Section 4. (a) By December 1, 2024, the Department of
353 Highway Safety and Motor Vehicles shall prepare and submit a
354 report to the Governor, the President of the Senate, and the
355 Speaker of the House of Representatives which:
356 1. Specifies the terms of the Electric Vehicle Battery
357 Deposit Program consistent with s. 320.97, Florida Statutes.
358 2. Identifies any implementation issues.
359 3. Makes recommendations on any further legislation that
360 may be necessary.
361 (b) The report shall contain recommendations on how the
362 state may further facilitate proper electric vehicle battery
363 disposal and recycling.
364 Section 5. Subsection (2) of section 338.234, Florida
365 Statutes, is renumbered as subsection (3) and a new subsection
366 (2) is added to that section, to read:
367 338.234 Granting concessions or selling along the turnpike
368 system; immunity from taxation.—
369 (2) If the department enters or has entered into a
370 contract or license with a vendor to allow for the sale of motor
371 fuel or charging services along the turnpike system, the
372 department must offer access to potential vendors of other motor
373 vehicle fuels or repowering services along the turnpike system,
374 including, but not limited to, hydrogen, compressed natural gas,
375 and liquefied natural gas.

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376 Section 6. Subsections (1), (2), and (5) of section
377 366.032, Florida Statutes, are amended to read:
378 366.032 Preemption over utility service restrictions.—
379 (1) A municipality, county, special district, development
380 district, or other political subdivision of the state may not
381 enact or enforce a resolution, ordinance, rule, code, or policy
382 or take any action that restricts or prohibits or has the effect
383 of restricting or prohibiting the types or fuel sources of
384 energy production which may be used, delivered, converted, or
385 supplied by the following entities to serve customers that such
386 entities are authorized to serve:
387 (a) A public utility or an electric utility as defined in
388 this chapter;
389 (b) An entity formed under s. 163.01 that generates,
390 sells, or transmits electrical energy;
391 (c) A natural gas utility as defined in s. 366.04(3)(c);
392 (d) A natural gas transmission company as defined in s.
393 368.103; or
394 (e) A Category I liquefied petroleum gas dealer or
395 Category II liquefied petroleum gas dispenser or Category III
396 liquefied petroleum gas cylinder exchange operator as defined in
397 s. 527.01.
398 (2) Except to the extent necessary to enforce the Florida
399 Building Code adopted pursuant to s. 553.73 or the Florida Fire
400 Prevention Code adopted pursuant to s. 633.202, a municipality,

401 county, special district, development district, or other
402 political subdivision of the state may not enact or enforce a
403 resolution, an ordinance, a rule, a code, or a policy or take
404 any action that restricts or prohibits or has the effect of
405 restricting or prohibiting the use of an appliance, including a
406 stove or grill, which uses the types or fuel sources of energy
407 production which may be used, delivered, converted, or supplied
408 by the entities listed in subsection (1). As used in this
409 subsection, the term "appliance" means a device or apparatus
410 manufactured and designed to use energy and for which the
411 Florida Building Code or the Florida Fire Prevention Code
412 provides specific requirements.
413 (5) Any municipality, county, special district,
414 development district, or political subdivision charter,
415 resolution, ordinance, rule, code, policy, or action that is
416 preempted by this act that existed before or on July 1, 2021, is
417 void.
418 Section 7. Subsection (10) is added to section 366.04,
419 Florida Statutes, to read:
420 366.04 Jurisdiction of commission.—
421 (10) In the exercise of its jurisdiction, the commission,
422 without specific legislative authority, may not authorize a
423 public utility to expand the scope of its regulated business
424 activity to include direct sales of energy to a consumer solely
425 for the consumer's use in powering means of transportation owned

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426 by the consumer. This provision does not apply to limited or
427 pilot programs approved by the commission before January 1,
428 2024.
429 Section 8. Section 366.057, Florida Statutes, is created
430 to read:
431 366.057 Retirement of electrical power plant.-
432 (1) For purposes of this section, the term "electrical
433 power plant" means any steam or solar electrical generating
434 facility that uses any process or fuel, including nuclear
435 materials, with a capacity of 75 megawatts or more. The term
436 also includes all associated facilities necessary for the
437 continued operation of the electrical power plant, such as
438 facilities that are physically connected to the electrical power
439 plant and facilities that are used to connect the electrical
440 power plant to an existing transmission network.
441 (2) Before retiring an electrical power plant, a public
442 utility must petition the commission for approval to retire the
443 plant, giving not less than 30 days' notice thereof.
444 (3) The commission shall enter a final order approving,
445 approving with conditions, or denying a petition within 180 days
446 after receiving the petition. In making its determination, the
447 commission must take into account the impact of the proposed
448 electrical power plant retirement on:
449 (a) Electric system reliability, resilience, and
450 integrity.

451 (b) The ability to provide adequate electricity at a
452 reasonable cost, including potential rate impacts.
453 (c) Fuel diversity and supply reliability.
454 (d) The use of domestic energy resources, including
455 renewable energy resources.
456 (e) The state's energy policy goals in s. 377.601(2).
457 (4) If the commission determines that the basis for
458 retirement of an electrical power plant is a requirement or
459 inducement provided in a proposed or actual federal regulation
460 and that such retirement is inconsistent with the state's energy
461 policy goals in s. 377.601(2), the commission shall inform the
462 Attorney General and provide technical support to the Attorney
463 General, as needed, to address the inconsistency.
464 Section 9. Section 366.94, Florida Statutes, is amended to
465 read:
466 366.94 Electric vehicle charging ~~stations~~.—
467 (1) The provision of electric vehicle charging to the
468 public by a nonutility is not the retail sale of electricity for
469 the purposes of this chapter. The rates, terms, and conditions
470 of electric vehicle charging services by a nonutility are not
471 subject to regulation under this chapter. This section does not
472 affect the ability of individuals, businesses, or governmental
473 entities to acquire, install, or use an electric vehicle charger
474 for their own vehicles.
475 (2) The Department of Agriculture and Consumer Services

476 shall adopt rules to provide definitions, methods of sale,
477 labeling requirements, and price-posting requirements for
478 electric vehicle charging ~~stations~~ to allow for consistency for
479 consumers and the industry.
480 (3)(a) It is unlawful for a person to stop, stand, or park
481 a vehicle that is not capable of using an electrical recharging
482 station within any parking space specifically designated for
483 charging an electric vehicle.
484 (b) If a law enforcement officer finds a motor vehicle in
485 violation of this subsection, the officer or specialist shall
486 charge the operator or other person in charge of the vehicle in
487 violation with a noncriminal traffic infraction, punishable as
488 provided in s. 316.008(4) or s. 318.18.
489 <u>(4) The commission may approve voluntary public utility</u>
490 <u>programs to become effective on or after January 1, 2025, for</u>
491 <u>residential, customer-specific electric vehicle charging if the</u>
492 <u>commission determines that the rates and rate structure of the</u>
493 <u>program will not adversely impact the public utility's general</u>
494 <u>body of ratepayers. All revenues received from the program must</u>
495 <u>be credited to the public utility's retail ratepayers. This</u>
496 <u>provision does not preclude cost recovery for electric vehicle</u>
497 <u>charging programs approved by the commission before January 1,</u>
498 <u>2024.</u>
499 Section 10. Section 377.601, Florida Statutes, is amended
500 to read:

501 377.601 Legislative intent.—
502 (1) The purpose of the state's energy policy is to ensure
503 an adequate and reliable supply of energy for the state in a
504 manner that promotes the health and welfare of the public and
505 economic growth. The Legislature intends that governance of the
506 state's energy policy be efficiently directed toward achieving
507 this purpose. ~~The Legislature finds that the state's energy~~
508 ~~security can be increased by lessening dependence on foreign~~
509 ~~oil; that the impacts of global climate change can be reduced~~
510 ~~through the reduction of greenhouse gas emissions; and that the~~
511 ~~implementation of alternative energy technologies can be a~~
512 ~~source of new jobs and employment opportunities for many~~
513 ~~Floridians. The Legislature further finds that the state is~~
514 ~~positioned at the front line against potential impacts of global~~
515 ~~climate change. Human and economic costs of those impacts can be~~
516 ~~averted by global actions and, where necessary, adapted to by a~~
517 ~~concerted effort to make Florida's communities more resilient~~
518 ~~and less vulnerable to these impacts. In focusing the~~
519 ~~government's policy and efforts to benefit and protect our~~
520 ~~state, its citizens, and its resources, the Legislature believes~~
521 ~~that a single government entity with a specific focus on energy~~
522 ~~and climate change is both desirable and advantageous. Further,~~
523 ~~the Legislature finds that energy infrastructure provides the~~
524 ~~foundation for secure and reliable access to the energy supplies~~
525 ~~and services on which Florida depends. Therefore, there is~~

526 ~~significant value to Florida consumers that comes from~~
527 ~~investment in Florida's energy infrastructure that increases~~
528 ~~system reliability, enhances energy independence and~~
529 ~~diversification, stabilizes energy costs, and reduces greenhouse~~
530 ~~gas emissions.~~
531 (2) For the purposes of subsection (1), the state's energy
532 policy must be guided by the following goals:
533 (a) Ensuring a cost-effective and affordable energy
534 supply.
535 (b) Ensuring adequate supply and capacity.
536 (c) Ensuring a secure, resilient, and reliable energy
537 supply, with an emphasis on a diverse supply of domestic energy
538 resources.
539 (d) Protecting public safety.
540 (e) Ensuring consumer choice.
541 (f) Protecting the state's natural resources, including
542 its coastlines, tributaries, and waterways.
543 (g) Supporting economic growth.
544 (3)~~(2)~~ In furtherance of the goals in subsection (2), it
545 is the policy of the State of Florida to:
546 (a) ~~Develop and~~ Promote the cost-effective development and
547 ~~effective~~ use of a diverse supply of domestic energy resources
548 in the state and~~,~~ discourage ~~all forms of~~ energy waste~~, and~~
549 ~~recognize and address the potential of global climate change~~
550 ~~wherever possible~~.

551 (b) Promote the cost-effective development and maintenance
552 of energy infrastructure that is resilient to natural and
553 manmade threats to the security and reliability of the state's
554 energy supply. ~~Play a leading role in developing and instituting~~
555 ~~energy management programs aimed at promoting energy~~
556 ~~conservation, energy security, and the reduction of greenhouse~~
557 ~~gas emissions.~~
558 (c) Reduce reliance on foreign energy resources.
559 (d)~~(c)~~ Include energy considerations in all state,
560 regional, and local planning.
561 (e)~~(d)~~ Utilize and manage effectively energy resources
562 used within state agencies.
563 (f)~~(e)~~ Encourage local governments to include energy
564 considerations in all planning and to support their work in
565 promoting energy management programs.
566 (g)~~(f)~~ Include the full participation of citizens in the
567 development and implementation of energy programs.
568 (h)~~(g)~~ Consider in its decisions the energy needs of each
569 economic sector, including residential, industrial, commercial,
570 agricultural, and governmental uses, and reduce those needs
571 whenever possible.
572 (i)~~(h)~~ Promote energy education and the public
573 dissemination of information on energy and its impacts in
574 relation to the goals in subsection (2) ~~environmental, economic,~~
575 ~~and social impact~~.

576 (j)~~(i)~~ Encourage the research, development, demonstration,
577 and application of domestic energy resources, including the use
578 of ~~alternative energy resources, particularly~~ renewable energy
579 resources.
580 (k)~~(j)~~ Consider, in its decisionmaking, the impacts of
581 energy-related activities on the goals in subsection (2) ~~social,~~
582 ~~economic, and environmental impacts of energy-related~~
583 ~~activities~~, including the whole-life-cycle impacts of any
584 potential energy use choices, so that detrimental effects of
585 these activities are understood and minimized.
586 (l)~~(k)~~ Develop and maintain energy emergency preparedness
587 plans to minimize the effects of an energy shortage within the
588 state ~~Florida~~.
589 Section 11. Subsections (2) of section 377.6015, Florida
590 Statutes, is amended to read:
591 377.6015 Department of Agriculture and Consumer Services;
592 powers and duties.—
593 (2) The department shall:
594 ~~(a) Administer the Florida Renewable Energy and Energy-~~
595 ~~Efficient Technologies Grants Program pursuant to s. 377.804 to~~
596 ~~assure a robust grant portfolio.~~
597 (a)~~(b)~~ Develop policy for requiring grantees to provide
598 royalty-sharing or licensing agreements with state government
599 for commercialized products developed under a state grant.
600 ~~(c) Administer the Florida Green Government Grants Act~~

601 ~~pursuant to s. 377.808 and set annual priorities for grants.~~
602 (b) ~~(d)~~ Administer the information gathering and reporting
603 functions pursuant to ss. 377.601-377.608.
604 ~~(e) Administer the provisions of the Florida Energy and~~
605 ~~Climate Protection Act pursuant to ss. 377.801-377.804.~~
606 (c) ~~(f)~~ Advocate for energy ~~and climate change~~ issues
607 consistent with the goals in s. 377.601(2) and provide
608 educational outreach and technical assistance in cooperation
609 with the state's academic institutions.
610 (d) ~~(g)~~ Be a party in the proceedings to adopt goals and
611 submit comments to the Public Service Commission pursuant to s.
612 366.82.
613 (e) ~~(h)~~ Adopt rules pursuant to chapter 120 in order to
614 implement all powers and duties described in this section.
615 Section 12. Subsection (1) and paragraphs (e), (f), and
616 (m) of subsection (2) of section 377.703, Florida Statutes, are
617 amended to read:
618 377.703 Additional functions of the Department of
619 Agriculture and Consumer Services.—
620 (1) LEGISLATIVE INTENT.—Recognizing that energy supply and
621 demand questions have become a major area of concern to the
622 state which must be dealt with by effective and well-coordinated
623 state action, it is the intent of the Legislature to promote the
624 efficient, effective, and economical management of energy
625 problems, centralize energy coordination responsibilities,

626 pinpoint responsibility for conducting energy programs, and
627 ensure the accountability of state agencies for the
628 implementation of s. 377.601 ~~s. 377.601(2)~~, the state energy
629 policy. It is the specific intent of the Legislature that
630 nothing in this act shall in any way change the powers, duties,
631 and responsibilities assigned by the Florida Electrical Power
632 Plant Siting Act, part II of chapter 403, or the powers, duties,
633 and responsibilities of the Florida Public Service Commission.
634 (2) DUTIES.—The department shall perform the following
635 functions, unless as otherwise provided, consistent with the
636 development of a state energy policy:
637 (e) The department shall analyze energy data collected and
638 prepare long-range forecasts of energy supply and demand in
639 coordination with the Florida Public Service Commission, which
640 is responsible for electricity and natural gas forecasts. To
641 this end, the forecasts shall contain:
642 1. An analysis of the relationship of state economic
643 growth and development to energy supply and demand, including
644 the constraints to economic growth resulting from energy supply
645 constraints.
646 2. ~~Plans for the development of renewable energy resources~~
647 ~~and reduction in dependence on depletable energy resources,~~
648 ~~particularly oil and natural gas, and~~ An analysis of the extent
649 to which domestic energy resources, including renewable energy
650 sources, are being utilized in the state.

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651 3. Consideration of alternative scenarios of statewide
652 energy supply and demand for 5, 10, and 20 years to identify
653 strategies for long-range action, including identification of
654 potential impacts in relation to the goals in s. 377.601(2)
655 ~~social, economic, and environmental effects~~.
656 4. An assessment of the state's energy resources,
657 including examination of the availability of commercially
658 developable and imported fuels, and an analysis of anticipated
659 impacts in relation to the goals in s. 377.601(2) ~~effects on the~~
660 ~~state's environment and social services~~ resulting from energy
661 resource development activities or from energy supply
662 constraints, or both.
663 (f) The department shall submit an annual report to the
664 Governor and the Legislature reflecting its activities and
665 making recommendations for policies for improvement of the
666 state's response to energy supply and demand and its effect on
667 the health, safety, and welfare of the residents of this state.
668 The report must include a report from the Florida Public Service
669 Commission on electricity and natural gas and information on
670 energy conservation programs conducted and underway in the past
671 year and include recommendations for energy efficiency and
672 conservation programs for the state, including:
673 1. Formulation of specific recommendations for improvement
674 in the efficiency of energy utilization in governmental,
675 residential, commercial, industrial, and transportation sectors.

676 2. Collection and dissemination of information relating to
677 energy efficiency and conservation.
678 3. Development and conduct of educational and training
679 programs relating to energy efficiency and conservation.
680 4. An analysis of the ways in which state agencies are
681 seeking to implement s. 377.601 ~~s. 377.601(2)~~, the state energy
682 policy, and recommendations for better fulfilling this policy.
683 (m) In recognition of the devastation to the economy of
684 this state and the dangers to the health and welfare of
685 residents of this state caused by severe hurricanes, and the
686 potential for such impacts caused by other natural disasters,
687 the Division of Emergency Management shall include in its energy
688 emergency contingency plan and provide to the Florida Building
689 Commission for inclusion in the Florida Energy Efficiency Code
690 for Building Construction specific provisions to facilitate the
691 use of cost-effective ~~solar~~ energy technologies as emergency
692 remedial and preventive measures for providing electric power,
693 street lighting, and water heating service in the event of
694 electric power outages.
695 Section 13. Sections 377.801, 377.802, 377.803, 377.804,
696 377.808, 377.809, and 377.816, Florida Statutes, are repealed.
697 Section 14. (1) For programs established pursuant to ss.
698 377.804, 377.808, 377.809, or s. 377.816, Florida Statutes,
699 there may not be:
700 (a) New or additional applications, certifications, or

701 allocations approved.
702 (b) New letters of certification issued.
703 (c) New contracts or agreements executed.
704 (d) New awards made.
705 (2) All certifications or allocations issued under such
706 programs are rescinded except for the certifications of, or
707 allocations to, those certified applicants or projects that
708 continue to meet the applicable criteria in effect before July
709 1, 2024. Any existing contract or agreement authorized under any
710 of these programs shall continue in full force and effect in
711 accordance with the statutory requirements in effect when the
712 contract or agreement was executed or last modified. However,
713 further modifications, extensions, or waivers may not be made or
714 granted relating to such contracts or agreements, except
715 computations by the Department of Revenue of the income
716 generated by or arising out of the qualifying project.
717 Section 15. Subsection (7) of section 288.9606, Florida
718 Statutes, is amended to read:
719 288.9606 Issue of revenue bonds.—
720 (7) Notwithstanding any provision of this section, the
721 corporation in its corporate capacity may, without authorization
722 from a public agency under s. 163.01(7), issue revenue bonds or
723 other evidence of indebtedness under this section to:
724 (a) Finance the undertaking of any project within the
725 state that promotes renewable energy as defined in s. 366.91 ~~or~~

726 ~~s. 377.803~~;
727 (b) Finance the undertaking of any project within the
728 state that is a project contemplated or allowed under s. 406 of
729 the American Recovery and Reinvestment Act of 2009; ~~or~~
730 (c) If permitted by federal law, finance qualifying
731 improvement projects within the state under s. 163.08; or~~.~~
732 (d) Finance the costs of acquisition or construction of a
733 transportation facility by a private entity or consortium of
734 private entities under a public-private partnership agreement
735 authorized by s. 334.30.
736 Section 16. Paragraph (w) of subsection (2) of section
737 380.0651, Florida Statutes, is amended to read:
738 380.0651 Statewide guidelines, standards, and exemptions.—
739 (2) STATUTORY EXEMPTIONS.—The following developments are
740 exempt from s. 380.06:
741 ~~(w) Any development in an energy economic zone designated~~
742 ~~pursuant to s. 377.809 upon approval by its local governing~~
743 ~~body.~~
744
745 If a use is exempt from review pursuant to paragraphs (a)-(u),
746 but will be part of a larger project that is subject to review
747 pursuant to s. 380.06(12), the impact of the exempt use must be
748 included in the review of the larger project, unless such exempt
749 use involves a development that includes a landowner, tenant, or
750 user that has entered into a funding agreement with the state

751 land planning agency under the Innovation Incentive Program and
752 the agreement contemplates a state award of at least $50
753 million.
754 Section 17. Subsection (2) of section 403.9405, Florida
755 Statutes, is amended to read:
756 403.9405 Applicability; certification; exemption; notice
757 of intent.—
758 (2) ~~No construction of~~ A natural gas transmission pipeline
759 may not be constructed ~~be undertaken after October 1, 1992,~~
760 without first obtaining certification under ss. 403.9401-
761 403.9425, but these sections do not apply to:
762 (a) Natural gas transmission pipelines which are less than
763 100 ~~15~~ miles in length or which do not cross a county line,
764 unless the applicant has elected to apply for certification
765 under ss. 403.9401-403.9425.
766 (b) Natural gas transmission pipelines for which a
767 certificate of public convenience and necessity has been issued
768 under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a
769 natural gas transmission pipeline certified as an associated
770 facility to an electrical power plant pursuant to the Florida
771 Electrical Power Plant Siting Act, ss. 403.501-403.518, unless
772 the applicant elects to apply for certification of that pipeline
773 under ss. 403.9401-403.9425.
774 (c) Natural gas transmission pipelines that are owned or
775 operated by a municipality or any agency thereof, by any person

776 primarily for the local distribution of natural gas, or by a
777 special district created by special act to distribute natural
778 gas, unless the applicant elects to apply for certification of
779 that pipeline under ss. 403.9401-403.9425.
780 Section 18. Subsection (3) of section 720.3075, Florida
781 Statutes, is amended to read:
782 720.3075 Prohibited clauses in association documents.—
783 (3) Homeowners' association documents, including
784 declarations of covenants, articles of incorporation, or bylaws,
785 may not preclude:
786 (a) The display of up to two portable, removable flags as
787 described in s. 720.304(2)(a) by property owners. However, all
788 flags must be displayed in a respectful manner consistent with
789 the requirements for the United States flag under 36 U.S.C.
790 chapter 10.
791 (b) Types or fuel sources of energy production which may
792 be used, delivered, converted, or supplied by the following
793 entities to serve customers within the association that such
794 entities are authorized to serve:
795 1. A public utility or an electric utility as defined in
796 this chapter;
797 2. An entity formed under s. 163.01 that generates, sells,
798 or transmits electrical energy;
799 3. A natural gas utility as defined in s. 366.04(3)(c);
800 4. A natural gas transmission company as defined in s.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

801 368.103; or
802 5. A Category I liquefied petroleum gas dealer, a Category
803 II liquefied petroleum gas dispenser, or a Category III
804 liquefied petroleum gas cylinder exchange operator as defined in
805 s. 527.01.
806 (c) The use of an appliance, including a stove or grill,
807 which uses the types or fuel sources of energy production which
808 may be used, delivered, converted, or supplied by the entities
809 listed in paragraph (b). As used in this paragraph, the term
810 "appliance" means a device or apparatus manufactured and
811 designed to use energy and for which the Florida Building Code
812 or the Florida Fire Prevention Code provides specific
813 requirements.
814 Section 19. (1) Recognizing the continued development and
815 growth of markets for technologies that allow businesses and
816 consumers to generate, store, and manage electrical energy for
817 their own use, and recognizing that the use of these
818 technologies has the potential to significantly impact the
819 electric grid and consumer choice, the Legislature directs the
820 Public Service Commission to ensure that these technologies are
821 used in a manner that best maintains the integrity of the state
822 electricity grid through market-based policies for consumers and
823 public utilities and through electric grid improvements that
824 ensure the safe, reliable, and cost-effective use of electrical
825 power from these technologies. Specifically, the commission

826 shall develop policies that establish programs and rate
827 mechanisms for smart energy demand response and for customer-
828 owned generation and energy storage exported to the grid or used
829 to enhance grid stability or resilience and reduce costs, such
830 that financial benefits are shared among users of these
831 technologies, public utilities, and their general body of
832 ratepayers based on the value provided by and to each party. The
833 policies shall also address the modernization of the state's
834 electric grid to ensure that the necessary infrastructure is in
835 place to implement these programs and rate mechanisms. The
836 policies must ensure that equipment used by utilities and
837 consumers to implement and participate in these programs and
838 rate mechanisms is manufactured in the United States or in
839 countries engaged in commerce with the United States pursuant to
840 free trade agreements.
841 (2) By January 1, 2024, the commission shall submit a
842 report to the Legislature that contains the policies developed
843 pursuant to this section, including the basis for each policy
844 and any matters that the commission deems relevant for the
845 Legislature's consideration in evaluating these policies. Such
846 policies may not be implemented until approved by the
847 Legislature, with the exception of limited pilot projects and
848 programs.
849 Section 20. (1) The Public Service Commission shall
850 conduct an assessment of the security and resiliency of the

851 state's electric grid and natural gas facilities against both
852 physical threats and cyber threats. The commission shall consult
853 with the Florida Digital Service in assessing cyber threats. All
854 electric utilities, natural gas utilities, and natural gas
855 pipelines operating in this state, regardless of ownership
856 structure, shall cooperate with the commission to provide access
857 to all information necessary to conduct the assessment.
858 (2) By January 1, 2025, the commission shall submit a
859 report of its assessment to the Governor, the President of the
860 Senate, and the Speaker of the House of Representatives. The
861 report must also contain any recommendations for potential
862 legislative or administrative actions that may enhance the
863 physical security or cyber security of the state's electric grid
864 or natural gas facilities.
865 Section 21. (1) Recognizing the evolution and advances
866 that have occurred and continue to occur in nuclear power
867 technologies, the Public Service Commission shall study and
868 evaluate the technical and economic feasibility of using
869 advanced nuclear power technologies, including small modular
870 reactors, to meet the electrical power needs of the state, and
871 research means to encourage and foster the installation and use
872 of such technologies at military installations in the state.
873 (2) By January 1, 2025, the commission shall prepare and
874 submit a report to the Governor, the President of the Senate,
875 and the Speaker of the House of Representatives, containing its

876 findings and any recommendations for potential legislative or
877 administrative actions that may enhance the use of advanced
878 nuclear technologies in a manner consistent with the energy
879 policy goals in s. 377.601(2), Florida Statutes.
880 Section 22. (1) Recognizing the continued development of
881 technologies that support the use of hydrogen as a
882 transportation fuel and the potential for such use to help meet
883 the state's energy policy goals in s. 377.601(2), Florida
884 Statutes, the Department of Transportation, in consultation with
885 the Office of Energy within the Department of Agriculture and
886 Consumer Services, shall study and evaluate the potential
887 development of hydrogen fueling infrastructure, including
888 fueling stations, to support hydrogen-powered vehicles that use
889 the state highway system.
890 (2) By January 1, 2025, the department shall prepare and
891 submit a report to the Governor, the President of the Senate,
892 and the Speaker of the House of Representatives, containing its
893 findings and any recommendations for potential legislative or
894 administrative actions that may accommodate the future
895 development of hydrogen fueling infrastructure in a manner
896 consistent with the energy policy goals in s. 377.601(2),
897 Florida Statutes.
898 Section 23. Except as otherwise provided in this act, this
899 act shall take effect July 1, 2024.

Energy, Communications & Cybersecurity Subcommittee
HB 1645 by Rep. Payne
Energy Resources

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Payne (Strike-All):

- Removes provisions that:
  - Required public utilities to obtain approval from the Public Service Commission (PSC) to retire certain electrical power plants and required the PSC to inform and provide technical support to the Attorney General if a plant retirement is required or induced by federal regulation and is inconsistent with the state's energy policy goals.
  - Required the PSC to develop certain smart grid policies to be submitted for consideration by the Legislature.
  - Required the Department of Transportation (DOT) to offer potential access to vendors of certain alternative motor vehicle fuels and repowering stations along the turnpike system.
  - Created an Electric Vehicle Battery Deposit Program within the Department of Highway Safety and Motor Vehicles.
- Provides for the recovery of certain facility relocation costs incurred by a natural gas utility through a charge separate from the utility's base rates.
- Extends due dates for certain reports that the bill requires the PSC and DOT to submit.
- Corrects drafting errors.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER ______

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1 Committee/Subcommittee hearing bill: Energy, Communications &
2 Cybersecurity Subcommittee
3 Representative Payne offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 163.3210, Florida Statutes, is created
8 to read:
9 163.3210 Natural gas resiliency and reliability
10 infrastructure.—
11 (1) It is the intent of the Legislature to maintain,
12 encourage, and ensure adequate and reliable fuel sources for
13 public utilities. The resiliency and reliability of fuel sources
14 for public utilities is critical to the state's economy; the
15 ability of the state to recover from natural disasters; and to

16 the health, safety, welfare, and quality of life of the
17 residents of the state.
18 (2) As used in this section, the term:
19 (a) "Natural gas" means all forms of fuel commonly or
20 commercially known or sold as natural gas, including compressed
21 natural gas and liquefied natural gas.
22 (b) "Natural gas reserve" means a facility that is capable
23 of storing and transporting and, when operational, actively
24 stores and transports a supply of natural gas.
25 (c) "Public utility" has the same meaning as defined in s.
26 366.02.
27 (d) "Resiliency facility" means a facility owned and
28 operated by a public utility for the purposes of assembling,
29 creating, holding, securing, or deploying natural gas reserves
30 for temporary use during a system outage or natural disaster.
31 (3) A resiliency facility is a permitted use in all
32 commercial, industrial, and manufacturing land use categories in
33 a local government comprehensive plan and all commercial,
34 industrial, and manufacturing districts. A resiliency facility
35 must comply with the setback and landscape criteria for other
36 similar uses. A local government may adopt an ordinance
37 specifying buffer and landscaping requirements for resiliency
38 facilities, provided that such requirements do not exceed the
39 requirements for similar uses involving the construction of
40 other facilities that are permitted uses in commercial,

41 industrial, and manufacturing land use categories and zoning
42 districts.
43 (4) After July 1, 2024, a local government may not amend
44 its comprehensive plan, land use map, zoning districts, or land
45 development regulations in a manner that would conflict with a
46 resiliency facility's classification as a permitted and
47 allowable use, including, but not limited to, an amendment that
48 causes a resiliency facility to be a nonconforming use,
49 structure, or development.
50 Section 2. Section 286.29, Florida Statutes, is amended to
51 read:
52 286.29 Energy guidelines for ~~Climate-friendly~~ public
53 business.~~—The Legislature recognizes the importance of~~
54 ~~leadership by state government in the area of energy efficiency~~
55 ~~and in reducing the greenhouse gas emissions of state government~~
56 ~~operations. The following shall pertain to all state agencies~~
57 ~~when conducting public business:~~
58 (1) ~~The Department of Management Services shall develop~~
59 ~~the "Florida Climate-Friendly Preferred Products List." In~~
60 ~~maintaining that list, the department, in consultation with the~~
61 ~~Department of Environmental Protection, shall continually assess~~
62 ~~products currently available for purchase under state term~~
63 ~~contracts to identify specific products and vendors that offer~~
64 ~~clear energy efficiency or other environmental benefits over~~
65 ~~competing products. When procuring products from state term~~

66 ~~contracts, state agencies shall first consult the Florida~~
67 ~~Climate-Friendly Preferred Products List and procure such~~
68 ~~products if the price is comparable.~~
69 ~~(2) State agencies shall contract for meeting and~~
70 ~~conference space only with hotels or conference facilities that~~
71 ~~have received the "Green Lodging" designation from the~~
72 ~~Department of Environmental Protection for best practices in~~
73 ~~water, energy, and waste efficiency standards, unless the~~
74 ~~responsible state agency head makes a determination that no~~
75 ~~other viable alternative exists.~~
76 ~~(3)~~ Each state agency shall ensure that all maintained
77 vehicles meet minimum maintenance schedules shown to reduce fuel
78 consumption, which include:
79 (a) Ensuring appropriate tire pressures and tread depth.~~;~~
80 (b) Replacing fuel filters and emission filters at
81 recommended intervals.~~;~~
82 (c) Using proper motor oils.~~; and~~
83 (d) Performing timely motor maintenance.
84
85 Each state agency shall measure and report compliance to the
86 Department of Management Services through the Equipment
87 Management Information System database.
88 ~~(4) When procuring new vehicles, all state agencies, state~~
89 ~~universities, community colleges, and local governments that~~
90 ~~purchase vehicles under a state purchasing plan shall first~~

91 ~~define the intended purpose for the vehicle and determine which~~
92 ~~of the following use classes for which the vehicle is being~~
93 ~~procured:~~
94 ~~(a) State business travel, designated operator;~~
95 ~~(b) State business travel, pool operators;~~
96 ~~(c) Construction, agricultural, or maintenance work;~~
97 ~~(d) Conveyance of passengers;~~
98 ~~(e) Conveyance of building or maintenance materials and~~
99 ~~supplies;~~
100 ~~(f) Off-road vehicle, motorcycle, or all-terrain vehicle;~~
101 ~~(g) Emergency response; or~~
102 ~~(h) Other.~~
103
104 ~~Vehicles described in paragraphs (a) through (h), when being~~
105 ~~processed for purchase or leasing agreements, must be selected~~
106 ~~for the greatest fuel efficiency available for a given use class~~
107 ~~when fuel economy data are available. Exceptions may be made for~~
108 ~~individual vehicles in paragraph (g) when accompanied, during~~
109 ~~the procurement process, by documentation indicating that the~~
110 ~~operator or operators will exclusively be emergency first~~
111 ~~responders or have special documented need for exceptional~~
112 ~~vehicle performance characteristics. Any request for an~~
113 ~~exception must be approved by the purchasing agency head and any~~
114 ~~exceptional performance characteristics denoted as a part of the~~
115 ~~procurement process prior to purchase.~~

116 (2)~~(5)~~ All state agencies shall use ethanol and biodiesel
117 blended fuels when available. State agencies administering
118 central fueling operations for state-owned vehicles shall
119 procure biofuels for fleet needs to the greatest extent
120 practicable.
121 (3)(a) The Department of Management Services shall, in
122 consultation with the Department of Commerce and the Department
123 of Agriculture and Consumer Services, develop a Florida Humane
124 Preferred Energy Products List. In developing the list, the
125 department must assess products currently available for purchase
126 under state term contracts that contain or consist of an energy
127 storage device with a capacity of greater than one kilowatt-hour
128 or that contain or consist of an energy generation device with a
129 capacity of greater than 500 watts and identify specific
130 products that appear to be largely made free from forced labor,
131 irrespective of the age of the worker. For purposes of this
132 subsection, the term "forced labor" means any work performed or
133 service rendered that is:
134 1. Obtained by intimidation, fraud, or coercion, including
135 by threat of serious bodily harm to, or physical restraint
136 against, a person, by means of a scheme intended to cause the
137 person to believe that if he or she does not perform such labor
138 or render such service, the person will suffer serious bodily
139 harm or physical restraint, or by means of the abuse or
140 threatened abuse of law or the legal process;

141 2. Imposed on the basis of a characteristic that has been
142 held by the United States Supreme Court or the Florida Supreme
143 Court to be protected against discrimination under the
144 Fourteenth Amendment to the United States Constitution or under
145 s. 2, Art. I of the State Constitution, including race, color,
146 national origin, religion, gender, or physical disability;
147 3. Not performed or rendered voluntarily by a person; or
148 4. In violation of the Child Labor Law or otherwise
149 performed or rendered through oppressive child labor.
150 (b) When procuring the types of energy products described
151 in paragraph (a) from state term contracts, state agencies and
152 political subdivisions shall first consult the Florida Humane
153 Preferred Energy Products List and may not purchase or procure
154 products not included in the list.
155 Section 3. Subsections (1), (2), and (5) of section
156 366.032, Florida Statutes, are amended to read:
157 366.032 Preemption over utility service restrictions.—
158 (1) A municipality, county, special district, development
159 district, or other political subdivision of the state may not
160 enact or enforce a resolution, ordinance, rule, code, or policy
161 or take any action that restricts or prohibits or has the effect
162 of restricting or prohibiting the types or fuel sources of
163 energy production which may be used, delivered, converted, or
164 supplied by the following entities to serve customers that such
165 entities are authorized to serve:

166 (a) A public utility or an electric utility as defined in
167 this chapter;
168 (b) An entity formed under s. 163.01 that generates,
169 sells, or transmits electrical energy;
170 (c) A natural gas utility as defined in s. 366.04(3)(c);
171 (d) A natural gas transmission company as defined in s.
172 368.103; or
173 (e) A Category I liquefied petroleum gas dealer or
174 Category II liquefied petroleum gas dispenser or Category III
175 liquefied petroleum gas cylinder exchange operator as defined in
176 s. 527.01.
177 (2) Except to the extent necessary to enforce the Florida
178 Building Code adopted pursuant to s. 553.73 or the Florida Fire
179 Prevention Code adopted pursuant to s. 633.202, a municipality,
180 county, special district, development district, or other
181 political subdivision of the state may not enact or enforce a
182 resolution, an ordinance, a rule, a code, or a policy or take
183 any action that restricts or prohibits or has the effect of
184 restricting or prohibiting the use of an appliance, including a
185 stove or grill, which uses the types or fuel sources of energy
186 production which may be used, delivered, converted, or supplied
187 by the entities listed in subsection (1). As used in this
188 subsection, the term "appliance" means a device or apparatus
189 manufactured and designed to use energy and for which the

190 Florida Building Code or the Florida Fire Prevention Code
191 provides specific requirements.
192 (5) Any municipality, county, special district,
193 development district, or political subdivision charter,
194 resolution, ordinance, rule, code, policy, or action that is
195 preempted by this act that existed before or on July 1, 2021, is
196 void.
197 Section 4. Subsection (10) is added to section 366.04,
198 Florida Statutes, to read:
199 366.04 Jurisdiction of commission.—
200 (10) In the exercise of its jurisdiction, the commission,
201 without specific legislative authority, may not authorize a
202 public utility to expand the scope of its regulated business
203 activity to include direct sales of energy to a consumer solely
204 for the consumer's use in powering means of transportation owned
205 by the consumer. This provision does not apply to limited or
206 pilot programs approved by the commission before January 1,
207 2024.
208 Section 5. Section 366.94, Florida Statutes, is amended to
209 read:
210 366.94 Electric vehicle charging ~~stations~~.—
211 (1) The provision of electric vehicle charging to the
212 public by a nonutility is not the retail sale of electricity for
213 the purposes of this chapter. The rates, terms, and conditions
214 of electric vehicle charging services by a nonutility are not

215 subject to regulation under this chapter. This section does not
216 affect the ability of individuals, businesses, or governmental
217 entities to acquire, install, or use an electric vehicle charger
218 for their own vehicles.
219 (2) The Department of Agriculture and Consumer Services
220 shall adopt rules to provide definitions, methods of sale,
221 labeling requirements, and price-posting requirements for
222 electric vehicle charging ~~stations~~ to allow for consistency for
223 consumers and the industry.
224 (3)(a) It is unlawful for a person to stop, stand, or park
225 a vehicle that is not capable of using an electrical recharging
226 station within any parking space specifically designated for
227 charging an electric vehicle.
228 (b) If a law enforcement officer finds a motor vehicle in
229 violation of this subsection, the officer or specialist shall
230 charge the operator or other person in charge of the vehicle in
231 violation with a noncriminal traffic infraction, punishable as
232 provided in s. 316.008(4) or s. 318.18.
233 (4) The commission may approve voluntary public utility
234 programs to become effective on or after January 1, 2025, for
235 residential, customer-specific electric vehicle charging if the
236 commission determines that the rates and rate structure of the
237 program will not adversely impact the public utility's general
238 body of ratepayers. All revenues received from the program must
239 be credited to the public utility's retail ratepayers. This

240 provision does not preclude cost recovery for electric vehicle
241 charging programs approved by the commission before January 1,
242 2024.
243 Section 6. Section 366.99, Florida Statutes, is created to
244 read:
245 366.99 Natural gas facilities relocation costs.—
246 (1) As used in this section, the term:
247 (a) "Authority" has the same meaning as in s.
248 337.401(1)(a).
249 (b) "Facilities relocation" means the physical moving,
250 modification, or reconstruction of public utility facilities to
251 accommodate the requirements imposed by an authority.
252 (c) "Natural gas facilities" or "facilities" means gas
253 mains, laterals, and service lines used to distribute natural
254 gas to customers. The term includes all ancillary equipment
255 needed for safe operations, including, but not limited to,
256 regulating stations, meters, other measuring devices,
257 regulators, and pressure monitoring equipment.
258 (d) "Natural gas facilities relocation costs" means the
259 costs to relocate or reconstruct facilities as required by a
260 mandate, a statute, a law, an ordinance, or an agreement between
261 the utility and an authority, including, but not limited to,
262 costs associated with reviewing plans provided by an authority.
263 The term does not include any costs recovered through the public
264 utility's base rates.

265 (e) "Public utility" or "utility" has the same meaning as
266 in s. 366.02, except that the term does not include an electric
267 utility.
268 (2) A utility may submit to the commission, pursuant to
269 commission rule, a petition describing the utility's projected
270 natural gas facilities relocation costs for the next calendar
271 year, actual natural gas facilities relocation costs for the
272 prior calendar year, and proposed cost-recovery factors designed
273 to recover such costs. A utility's decision to proceed with
274 implementing a plan before filing such a petition does not
275 constitute imprudence.
276 (3) The commission shall conduct an annual proceeding to
277 determine each utility's prudently incurred natural gas
278 facilities relocation costs and to allow each utility to recover
279 such costs through a charge separate and apart from base rates,
280 to be referred to as the natural gas facilities relocation cost
281 recovery clause. The commission's review in the proceeding is
282 limited to determining the prudence of the utility's actual
283 incurred natural gas facilities relocation costs and the
284 reasonableness of the utility's projected natural gas facilities
285 relocation costs for the following calendar year; and providing
286 for a true-up of the costs with the projections on which past
287 factors were set. The commission shall require that any refund
288 or collection made as a part of the true-up process includes
289 interest.

290 (4) All costs approved for recovery through the natural
291 gas facilities relocation cost recovery clause must be allocated
292 to customer classes pursuant to the rate design most recently
293 approved by the commission.
294 (5) If a capital expenditure is recoverable as a natural
295 gas facilities relocation cost, the public utility may recover
296 the annual depreciation on the cost, calculated at the public
297 utility's current approved depreciation rates, and a return on
298 the undepreciated balance of the costs at the public utility's
299 weighted average cost of capital using the last approved return
300 on equity.
301 (6) The commission shall adopt rules to implement and
302 administer this section and shall propose a rule for adoption as
303 soon as practicable after July 1, 2024.
304 Section 7. Section 377.601, Florida Statutes, is amended
305 to read:
306 377.601 Legislative intent.—
307 (1) The purpose of the state's energy policy is to ensure
308 an adequate, reliable, and cost-effective supply of energy for
309 the state in a manner that promotes the health and welfare of
310 the public and economic growth. The Legislature intends that
311 governance of the state's energy policy be efficiently directed
312 toward achieving this purpose ~~The Legislature finds that the~~
313 ~~state's energy security can be increased by lessening dependence~~
314 ~~on foreign oil; that the impacts of global climate change can be~~

315 ~~reduced through the reduction of greenhouse gas emissions; and~~
316 ~~that the implementation of alternative energy technologies can~~
317 ~~be a source of new jobs and employment opportunities for many~~
318 ~~Floridians. The Legislature further finds that the state is~~
319 ~~positioned at the front line against potential impacts of global~~
320 ~~climate change. Human and economic costs of those impacts can be~~
321 ~~averted by global actions and, where necessary, adapted to by a~~
322 ~~concerted effort to make Florida's communities more resilient~~
323 ~~and less vulnerable to these impacts. In focusing the~~
324 ~~government's policy and efforts to benefit and protect our~~
325 ~~state, its citizens, and its resources, the Legislature believes~~
326 ~~that a single government entity with a specific focus on energy~~
327 ~~and climate change is both desirable and advantageous. Further,~~
328 ~~the Legislature finds that energy infrastructure provides the~~
329 ~~foundation for secure and reliable access to the energy supplies~~
330 ~~and services on which Florida depends. Therefore, there is~~
331 ~~significant value to Florida consumers that comes from~~
332 ~~investment in Florida's energy infrastructure that increases~~
333 ~~system reliability, enhances energy independence and~~
334 ~~diversification, stabilizes energy costs, and reduces greenhouse~~
335 ~~gas emissions~~.
336 (2) For the purposes of subsection (1), the state's energy
337 policy must be guided by the following goals:
338 (a) Ensuring a cost-effective and affordable energy
339 supply.

340 (b) Ensuring adequate supply and capacity.
341 (c) Ensuring a secure, resilient, and reliable energy
342 supply, with an emphasis on a diverse supply of domestic energy
343 resources.
344 (d) Protecting public safety.
345 (e) Protecting the state's natural resources, including
346 its coastlines, tributaries, and waterways.
347 (f) Supporting economic growth.
348 (3) ~~(2)~~ In furtherance of the goals in subsection (2), it
349 is the policy of the state ~~of Florida~~ to:
350 (a) ~~Develop and~~ Promote the cost-effective development and
351 ~~effective~~ use of a diverse supply of domestic energy resources
352 in this ~~the~~ state and~~,~~ discourage ~~all forms of~~ energy waste~~, and~~
353 ~~recognize and address the potential of global climate change~~
354 ~~wherever possible~~.
355 (b) Promote the cost-effective development and maintenance
356 of energy infrastructure that is resilient to natural and
357 manmade threats to the security and reliability of the state's
358 energy supply ~~Play a leading role in developing and instituting~~
359 ~~energy management programs aimed at promoting energy~~
360 ~~conservation, energy security, and the reduction of greenhouse~~
361 ~~gas emissions~~.
362 (c) Reduce reliance on foreign energy resources.
363 (d) ~~(c)~~ Include energy reliability and security
364 considerations in all state, regional, and local planning.

365 (e)~~(d)~~ Utilize and manage effectively energy resources
366 used within state agencies.
367 (f)~~(e)~~ Encourage local governments to include energy
368 considerations in all planning and to support their work in
369 promoting energy management programs.
370 (g)~~(f)~~ Include the full participation of citizens in the
371 development and implementation of energy programs.
372 (h)~~(g)~~ Consider in its decisions the energy needs of each
373 economic sector, including residential, industrial, commercial,
374 agricultural, and governmental uses, and reduce those needs
375 whenever possible.
376 (i)~~(h)~~ Promote energy education and the public
377 dissemination of information on energy and its impacts in
378 relation to the goals in subsection (2) ~~environmental, economic,~~
379 ~~and social impact~~.
380 (j)~~(i)~~ Encourage the research, development, demonstration,
381 and application of domestic energy resources, including the use
382 of ~~alternative energy resources, particularly~~ renewable energy
383 resources.
384 (k)~~(j)~~ Consider, in its decisionmaking, the impacts of
385 energy-related activities on the goals in subsection (2) ~~social,~~
386 ~~economic, and environmental impacts of energy-related~~
387 ~~activities~~, including the whole-life-cycle impacts of any
388 potential energy use choices, so that detrimental effects of
389 these activities are understood and minimized.

390 (l)~~(k)~~ Develop and maintain energy emergency preparedness
391 plans to minimize the effects of an energy shortage within this
392 state ~~Florida~~
393 Section 8. Subsection (2) of section 377.6015, Florida
394 Statutes, is amended to read:
395 377.6015 Department of Agriculture and Consumer Services;
396 powers and duties.—
397 (2) The department shall:
398 (a) ~~Administer the Florida Renewable Energy and Energy-~~
399 ~~Efficient Technologies Grants Program pursuant to s. 377.804 to~~
400 ~~assure a robust grant portfolio.~~
401 ~~(b)~~ Develop policy for requiring grantees to provide
402 royalty-sharing or licensing agreements with state government
403 for commercialized products developed under a state grant.
404 ~~(c) Administer the Florida Green Government Grants Act~~
405 ~~pursuant to s. 377.808 and set annual priorities for grants.~~
406 (b)~~(d)~~ Administer the information gathering and reporting
407 functions pursuant to ss. 377.601-377.608.
408 ~~(e) Administer the provisions of the Florida Energy and~~
409 ~~Climate Protection Act pursuant to ss. 377.801-377.804~~.
410 (c)~~(f)~~ Advocate for energy ~~and climate change~~ issues
411 consistent with the goals in s. 377.601(2) and provide
412 educational outreach and technical assistance in cooperation
413 with the state's academic institutions.
414 (d)~~(g)~~ Be a party in the proceedings to adopt goals and

415 submit comments to the Public Service Commission pursuant to s.
416 366.82.
417 (e) ~~(h)~~ Adopt rules pursuant to chapter 120 in order to
418 implement all powers and duties described in this section.
419 Section 9. Subsection (1) and paragraphs (e), (f), and (m)
420 of subsection (2) of section 377.703, Florida Statutes, are
421 amended to read:
422 377.703 Additional functions of the Department of
423 Agriculture and Consumer Services.—
424 (1) LEGISLATIVE INTENT.—Recognizing that energy supply and
425 demand questions have become a major area of concern to the
426 state which must be dealt with by effective and well-coordinated
427 state action, it is the intent of the Legislature to promote the
428 efficient, effective, and economical management of energy
429 problems, centralize energy coordination responsibilities,
430 pinpoint responsibility for conducting energy programs, and
431 ensure the accountability of state agencies for the
432 implementation of s. 377.601 ~~s. 377.601(2)~~, the state energy
433 policy. It is the specific intent of the Legislature that
434 nothing in this act shall in any way change the powers, duties,
435 and responsibilities assigned by the Florida Electrical Power
436 Plant Siting Act, part II of chapter 403, or the powers, duties,
437 and responsibilities of the Florida Public Service Commission.
438 (2) DUTIES.—The department shall perform the following
439 functions, unless as otherwise provided, consistent with the

440 development of a state energy policy:
441 (e) The department shall analyze energy data collected and
442 prepare long-range forecasts of energy supply and demand in
443 coordination with the Florida Public Service Commission, which
444 is responsible for electricity and natural gas forecasts. To
445 this end, the forecasts shall contain:
446 1. An analysis of the relationship of state economic
447 growth and development to energy supply and demand, including
448 the constraints to economic growth resulting from energy supply
449 constraints.
450 2. ~~Plans for the development of renewable energy resources~~
451 ~~and reduction in dependence on depletable energy resources,~~
452 ~~particularly oil and natural gas, and~~ An analysis of the extent
453 to which domestic energy resources, including renewable energy
454 sources, are being utilized in this ~~the~~ state.
455 3. Consideration of alternative scenarios of statewide
456 energy supply and demand for 5, 10, and 20 years to identify
457 strategies for long-range action, including identification of
458 potential impacts in relation to the goals in s. 377.601(2)
459 ~~social, economic, and environmental effects~~.
460 4. An assessment of the state's energy resources,
461 including examination of the availability of commercially
462 developable and imported fuels, and an analysis of anticipated
463 impacts in relation to the goals in s. 377.601(2) ~~effects on the~~
464 ~~state's environment and social services~~ resulting from energy

465 resource development activities or from energy supply
466 constraints, or both.
467 (f) The department shall submit an annual report to the
468 Governor and the Legislature reflecting its activities and
469 making recommendations for policies for improvement of the
470 state's response to energy supply and demand and its effect on
471 the health, safety, and welfare of the residents of this state.
472 The report must include a report from the Florida Public Service
473 Commission on electricity and natural gas and information on
474 energy conservation programs conducted and underway in the past
475 year and include recommendations for energy efficiency and
476 conservation programs for the state, including:
477 1. Formulation of specific recommendations for improvement
478 in the efficiency of energy utilization in governmental,
479 residential, commercial, industrial, and transportation sectors.
480 2. Collection and dissemination of information relating to
481 energy efficiency and conservation.
482 3. Development and conduct of educational and training
483 programs relating to energy efficiency and conservation.
484 4. An analysis of the ways in which state agencies are
485 seeking to implement s. 377.601 ~~s. 377.601(2)~~, the state energy
486 policy, and recommendations for better fulfilling this policy.
487 (m) In recognition of the devastation to the economy of
488 this state and the dangers to the health and welfare of
489 residents of this state caused by severe hurricanes, and the

490 potential for such impacts caused by other natural disasters,
491 the Division of Emergency Management shall include in its energy
492 emergency contingency plan and provide to the Florida Building
493 Commission for inclusion in the Florida Energy Efficiency Code
494 for Building Construction specific provisions to facilitate the
495 use of cost-effective ~~solar~~ energy technologies as emergency
496 remedial and preventive measures for providing electric power,
497 street lighting, and water heating service in the event of
498 electric power outages.
499 Section 10. Sections 377.801, 377.802, 377.803, 377.804,
500 377.808, 377.809, and 377.816, Florida Statutes, are repealed.
501 Section 11. (1) For programs established pursuant to ss.
502 377.804, 377.808, 377.809, or s. 377.816, Florida Statutes,
503 there may not be:
504 (a) New or additional applications, certifications, or
505 allocations approved.
506 (b) New letters of certification issued.
507 (c) New contracts or agreements executed.
508 (d) New awards made.
509 (2) All certifications or allocations issued under such
510 programs are rescinded except for the certifications of, or
511 allocations to, those certified applicants or projects that
512 continue to meet the applicable criteria in effect before July
513 1, 2024. Any existing contract or agreement authorized under any
514 of these programs shall continue in full force and effect in

515 accordance with the statutory requirements in effect when the
516 contract or agreement was executed or last modified. However,
517 further modifications, extensions, or waivers may not be made or
518 granted relating to such contracts or agreements, except
519 computations by the Department of Revenue of the income
520 generated by or arising out of the qualifying project.
521 Section 12. Subsection (7) of section 288.9606, Florida
522 Statutes, is amended to read:
523 288.9606 Issue of revenue bonds.—
524 (7) Notwithstanding any provision of this section, the
525 corporation in its corporate capacity may, without authorization
526 from a public agency under s. 163.01(7), issue revenue bonds or
527 other evidence of indebtedness under this section to:
528 (a) Finance the undertaking of any project within the
529 state that promotes renewable energy as defined in s. 366.91 ~~or~~
530 ~~s. 377.803~~;
531 (b) Finance the undertaking of any project within the
532 state that is a project contemplated or allowed under s. 406 of
533 the American Recovery and Reinvestment Act of 2009; ~~or~~
534 (c) If permitted by federal law, finance qualifying
535 improvement projects within the state under s. 163.08; or~~.~~
536 (d) Finance the costs of acquisition or construction of a
537 transportation facility by a private entity or consortium of
538 private entities under a public-private partnership agreement
539 authorized by s. 334.30.

540 Section 13. Paragraph (w) of subsection (2) of section
541 380.0651, Florida Statutes, is amended to read:
542 380.0651 Statewide guidelines, standards, and exemptions.—
543 (2) STATUTORY EXEMPTIONS.—The following developments are
544 exempt from s. 380.06:
545 ~~(w) Any development in an energy economic zone designated~~
546 ~~pursuant to s. 377.809 upon approval by its local governing~~
547 ~~body.~~
548
549 If a use is exempt from review pursuant to paragraphs (a)-(u),
550 but will be part of a larger project that is subject to review
551 pursuant to s. 380.06(12), the impact of the exempt use must be
552 included in the review of the larger project, unless such exempt
553 use involves a development that includes a landowner, tenant, or
554 user that has entered into a funding agreement with the state
555 land planning agency under the Innovation Incentive Program and
556 the agreement contemplates a state award of at least $50
557 million.
558 Section 14. Subsection (2) of section 403.9405, Florida
559 Statutes, is amended to read:
560 403.9405 Applicability; certification; exemption; notice
561 of intent.—
562 (2) ~~No construction of~~ A natural gas transmission pipeline
563 may not be constructed ~~be undertaken after October 1, 1992,~~
564 without first obtaining certification under ss. 403.9401-

565 403.9425, but these sections do not apply to:
566 (a) Natural gas transmission pipelines which are less than
567 100 ~~15~~ miles in length or which do not cross a county line,
568 unless the applicant has elected to apply for certification
569 under ss. 403.9401-403.9425.
570 (b) Natural gas transmission pipelines for which a
571 certificate of public convenience and necessity has been issued
572 under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a
573 natural gas transmission pipeline certified as an associated
574 facility to an electrical power plant pursuant to the Florida
575 Electrical Power Plant Siting Act, ss. 403.501-403.518, unless
576 the applicant elects to apply for certification of that pipeline
577 under ss. 403.9401-403.9425.
578 (c) Natural gas transmission pipelines that are owned or
579 operated by a municipality or any agency thereof, by any person
580 primarily for the local distribution of natural gas, or by a
581 special district created by special act to distribute natural
582 gas, unless the applicant elects to apply for certification of
583 that pipeline under ss. 403.9401-403.9425.
584 Section 15. Subsection (3) of section 720.3075, Florida
585 Statutes, is amended to read:
586 720.3075 Prohibited clauses in association documents.—
587 (3) Homeowners' association documents, including
588 declarations of covenants, articles of incorporation, or bylaws,
589 may not preclude:

590 (a) The display of up to two portable, removable flags as
591 described in s. 720.304(2)(a) by property owners. However, all
592 flags must be displayed in a respectful manner consistent with
593 the requirements for the United States flag under 36 U.S.C.
594 chapter 10.
595 (b) Types or fuel sources of energy production which may
596 be used, delivered, converted, or supplied by the following
597 entities to serve customers within the association that such
598 entities are authorized to serve:
599 1. A public utility or an electric utility as defined in
600 this chapter;
601 2. An entity formed under s. 163.01 that generates, sells,
602 or transmits electrical energy;
603 3. A natural gas utility as defined in s. 366.04(3)(c);
604 4. A natural gas transmission company as defined in s.
605 368.103; or
606 5. A Category I liquefied petroleum gas dealer, a Category
607 II liquefied petroleum gas dispenser, or a Category III
608 liquefied petroleum gas cylinder exchange operator as defined in
609 s. 527.01.
610 (c) The use of an appliance, including a stove or grill,
611 which uses the types or fuel sources of energy production which
612 may be used, delivered, converted, or supplied by the entities
613 listed in paragraph (b). As used in this paragraph, the term
614 "appliance" means a device or apparatus manufactured and

615 designed to use energy and for which the Florida Building Code
616 or the Florida Fire Prevention Code provides specific
617 requirements.
618 Section 16. (1) The Public Service Commission shall
619 conduct an assessment of the security and resiliency of the
620 state's electric grid and natural gas facilities against both
621 physical threats and cyber threats. In conducting this
622 assessment, the commission shall consult with the Department of
623 Emergency Management and, in its assessment of cyber threats,
624 shall consult with the Florida Digital Service. All electric
625 utilities, natural gas utilities, and natural gas pipelines
626 operating in this state, regardless of ownership structure,
627 shall cooperate with the commission to provide access to all
628 information necessary to conduct the assessment.
629 (2) By July 1, 2025, the commission shall submit a report
630 of its assessment to the Governor, the President of the Senate,
631 and the Speaker of the House of Representatives. The report must
632 also contain any recommendations for potential legislative or
633 administrative actions that may enhance the physical security or
634 cyber security of the state's electric grid or natural gas
635 facilities.
636 Section 17. (1) Recognizing the evolution and advances
637 that have occurred and continue to occur in nuclear power
638 technologies, the Public Service Commission shall study and
639 evaluate the technical and economic feasibility of using

640 advanced nuclear power technologies, including small modular
641 reactors, to meet the electrical power needs of the state, and
642 research means to encourage and foster the installation and use
643 of such technologies at military installations in the state in
644 partnership with public utilities. In conducting this study, the
645 commission shall consult with the Department of Environmental
646 Protection and the Department of Emergency Management.
647 (2) By April 1, 2025, the commission shall prepare and
648 submit a report to the Governor, the President of the Senate,
649 and the Speaker of the House of Representatives, containing its
650 findings and any recommendations for potential legislative or
651 administrative actions that may enhance the use of advanced
652 nuclear technologies in a manner consistent with the energy
653 policy goals in s. 377.601(2), Florida Statutes.
654 Section 18. (1) Recognizing the continued development of
655 technologies that support the use of hydrogen as a
656 transportation fuel and the potential for such use to help meet
657 the state's energy policy goals in s. 377.601(2), Florida
658 Statutes, the Department of Transportation, in consultation with
659 the Office of Energy within the Department of Agriculture and
660 Consumer Services, shall study and evaluate the potential
661 development of hydrogen fueling infrastructure, including
662 fueling stations, to support hydrogen-powered vehicles that use
663 the state highway system.
664 (2) By April 1, 2025, the department shall prepare and

665 submit a report to the Governor, the President of the Senate,
666 and the Speaker of the House of Representatives, containing its
667 findings and any recommendations for potential legislative or
668 administrative actions that may accommodate the future
669 development of hydrogen fueling infrastructure in a manner
670 consistent with the energy policy goals in s. 377.601(2),
671 Florida Statutes.
672 Section 19. This act shall take effect July 1, 2024.
673
674 ---
675 **T I T L E A M E N D M E N T**
676 Remove everything before the enacting clause and insert:
677 An act relating to energy resources; creating s. 163.3210, F.S.;
678 providing legislative intent; providing definitions; allowing
679 resiliency facilities in certain land use categories in local
680 government comprehensive plans and specified districts if
681 certain criteria are met; allowing local governments to adopt
682 ordinances for resiliency facilities if certain requirements are
683 met; prohibiting amendments to a local government's
684 comprehensive plan, land use map, zoning districts, or land
685 development regulations in a manner that would conflict with
686 resiliency facility classification after a specified date;
687 amending s. 286.29, F.S.; revising energy guidelines for public
688 businesses; eliminating the requirement that the Department of
689 Management Services develop and maintain the Florida Climate-

690 Friendly Preferred Products List; eliminating the requirement
691 that state agencies contract for meeting and conference space
692 only with facilities that have a Green Lodging designations;
693 eliminating the requirement that state agencies, state
694 universities, community colleges, and local governments that
695 procure new vehicles under a state purchasing plan select
696 certain vehicles under a specified circumstance; requiring the
697 Department of Management Services to develop a Florida Humane
698 Preferred Energy Products List in consultation with the
699 Department of Commerce and the Department of Agriculture and
700 Consumer Services; providing for assessment considerations in
701 developing the list; defining the term "forced labor"; requiring
702 state agencies and political subdivisions that procure energy
703 products from state term contracts to consult the list and
704 purchase or procure such products; prohibiting state agencies
705 and political subdivisions from purchasing or procuring products
706 not included in the list; amending s. 366.032, F.S.; including
707 development districts as a type of political subdivision for
708 purposes of preemption over utility service restrictions;
709 amending s. 366.04, F.S.; revising the jurisdiction of the
710 Florida Public Service Commission; amending s. 366.94, F.S.;
711 removing terminology; conforming provisions to changes made by
712 the act; authorizing the commission upon a specified date to
713 approve voluntary public utility programs for electric vehicle
714 charging if certain requirements are met; requiring that all

715 revenues received from such program be credited to the public
716 utility's general body of ratepayers; providing applicability;
717 creating s. 366.99, F.S.; defining terms; authorizing public
718 utilities to submit to the commission a petition for a proposed
719 cost recovery for certain natural gas facilities relocation
720 costs; requiring the commission to conduct annual proceedings to
721 determine each utility's prudently incurred natural gas
722 facilities relocation costs and to allow for the recovery of
723 such costs; providing requirements for the commission's review;
724 providing requirements for the allocation of such recovered
725 costs; requiring the commission to adopt rules; providing a
726 timeframe for such rulemaking; amending s. 377.601, F.S.;
727 revising legislative intent; amending s. 377.6015, F.S.;
728 revising the powers and duties of the department; conforming
729 provisions to changes made by the act; amending s. 377.703,
730 F.S.; revising additional functions of the department relating
731 to energy resources; conforming provisions to changes made by
732 the act; repealing s. 377.801, F.S., relating to the Florida
733 Energy and Climate Protection Act; repealing s. 377.802, F.S.,
734 relating to the purpose of the act; repealing s. 377.803, F.S.,
735 relating to definitions under the act; repealing s. 377.804,
736 F.S., relating to the Renewable Energy and Energy-Efficient
737 Technologies Grants Program; repealing s. 377.808, F.S.,
738 relating to the Florida Green Government Grants Act; repealing
739 s. 377.809, F.S., relating to the Energy Economic Zone Pilot

740 Program; repealing s. 377.816, F.S., relating to the Qualified
741 Energy Conservation Bond Allocation Program; prohibiting the
742 approval of new or additional applications, certifications, or
743 allocations under such programs; prohibiting new contracts,
744 agreements, and awards under such programs; rescinding all
745 certifications or allocations issued under such programs;
746 providing an exception; providing application relating to
747 existing contracts or agreements under such programs; amending
748 ss. 288.9606 and 380.0651, F.S.; conforming provisions to
749 changes made by the act; amending s. 403.9405, F.S.; revising
750 the applicability of the Natural Gas Transmission Pipeline
751 Siting Act; amending s. 720.3075, F.S.; prohibiting certain
752 homeowners' association documents from precluding certain types
753 or fuel sources of energy production and the use of certain
754 appliances; requiring the commission to conduct an assessment of
755 the security and resiliency of the state's electric grid and
756 natural gas facilities against physical threats and cyber
757 threats; requiring the commission to consult with the Department
758 of Emergency Management and the Florida Digital Service;
759 requiring cooperation from all operating facilities in the state
760 relating to such assessment; requiring the commission to submit
761 by a specified date a report of such assessment to the Governor
762 and the Legislature; providing additional content requirements
763 for such report; requiring the commission to study and evaluate
764 the technical and economic feasibility of using advanced nuclear

765 power technologies to meet the electrical power needs of the
766 state; requiring the commission to consult with the Department
767 of Environmental Protection and the Department of Emergency
768 Management; requiring the commission to submit by a specified
769 date a report to the Governor and the Legislature that contains
770 its findings and any additional recommendations for potential
771 legislative or administrative actions; requiring the Department
772 of Transportation, in consultation with the Office of Energy
773 within the Department of Agriculture and Consumer Services, to
774 study and evaluate the potential development of hydrogen fueling
775 infrastructure to support hydrogen-powered vehicles; requiring
776 the department to submit by a specified date a report to the
777 Governor and the Legislature that contains its findings and
778 recommendations for specified actions that may accommodate the
779 future development of hydrogen fueling infrastructure; providing
780 an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 683 Energy Infrastructure Investment
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy, Communications & Cybersecurity Subcommittee		Bauldree	Keating

SUMMARY ANALYSIS

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of public (investor-owned) electric and natural gas utilities in Florida. The PSC sets rates for these utilities through various mechanisms to allow the utilities to recover their legitimate costs of providing service, including a return on the utility's prudent capital investments.

Renewable natural gas (RNG) is the gaseous product of the decomposition of organic matter, processed into a pipeline-quality gas that is fully interchangeable with conventional natural gas. Primary sources of RNG include landfills, livestock operations, and wastewater treatment facilities. Hydrogen fuel is produced predominantly from natural gas but can also be produced, at a greater cost, by electrolysis powered by renewable energy.

The bill provides that the PSC may create an experimental mechanism to facilitate investment in energy infrastructure consistent with the legislature's intent to promote renewable energy and the definition of "renewable natural gas." Thus, it appears that the bill authorizes the PSC to create an experimental mechanism to promote investment in renewable natural gas infrastructure.

The bill does not appear to impact state or local government revenues or expenditures.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rate Setting for Public Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of public (investor-owned) electric and natural gas utilities in Florida.[1] Under this broad grant of authority, and through more specific grants of authority in Chapter 366, F.S., the PSC sets rates for such utilities through various mechanisms, each of which is established in a separate administrative proceeding:

- Base rates (set for electric and natural gas utilities)
  - Adjusted as needed in a general rate case, conducted through a formal evidentiary hearing for electric utilities and either a formal or informal proceeding for natural gas utilities.[2]
  - Designed to recover most operations and maintenance expenses, depreciation expense (recovery of capital investment over time), and a return on capital investment.
- Fuel and purchased power cost recovery charges (set for electric utilities only)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of certain capital investments, including a return on investment.
- Purchased gas adjustment charges (set for natural gas utilities only)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover the costs of wholesale natural gas purchases.
- Capacity cost recovery charges (set for electric utilities only)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return.[3]
- Environmental cost recovery charges (set for electric utilities only)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment.[4]
- Storm protection plan cost recovery charges (set for electric utilities only)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover costs to implement PSC-approved storm protection plans.
  - By statute, may include recovery of certain capital investments, including a return on investment.[5]
- Energy conservation and efficiency cost recovery charges (set for electric and natural gas utilities)
  - Adjusted annually through a formal evidentiary hearing.
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

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[1] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S.
[2] A natural gas utility or a public electric utility whose annual sales to end-use customers amount to less than 1,000 gigawatt hours may request that the PSC process the utility's petition for rate relief using an informal "proposed agency action" procedure. S. 366.06(4), F.S.
[3] S. 366.93, F.S.
[4] S. 366.8255, F.S.
[5] S. 366.96, F.S.

As required by law, the PSC sets base rates to allow utilities to recover their legitimate costs of providing service (not otherwise recovered through another cost recovery mechanism), including a return on the utility's prudent capital investments ("rate base").[6] In each rate case, the PSC sets a "reasonable" rate of return on equity for each utility to apply to its rate base. This rate is typically applied to the utility's investments that the PSC allows to be recovered through cost recovery mechanisms other than base rates.

The PSC is also authorized to establish certain experimental rates.[7]

Renewable Energy

Florida law provides that it is in the public interest to promote the development of renewable energy resources to help diversify fuel types for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[8] The law defines renewable energy as energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power.[9]

Renewable Natural Gas

Renewable natural gas (RNG) is the gaseous product of the decomposition of organic matter, processed into a pipeline-quality gas that is fully interchangeable with conventional natural gas. Primary sources of RNG include landfills, livestock operations, and wastewater treatment facilities.[10]

In 2021, the Legislature added the term "renewable natural gas" to Florida law and defined it as "anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline." The legislation authorized the PSC to approve cost recovery for the purchase of RNG by natural gas public utilities, even if pricing exceeds the current market price of natural gas, if the PSC deems the purchase to be reasonable and prudent.[11]

Effect of the Bill

The bill provides that the PSC may create an experimental mechanism to facilitate investment in energy infrastructure consistent with the legislature's intent to promote renewable energy and the definition of "renewable natural gas." Thus, it appears that the bill authorizes the PSC to create an experimental mechanism to promote investment in renewable natural gas infrastructure. Under the bill, the experimental mechanism must be consistent with part of the structure set forth in current law for storm protection plan cost recovery.[12, 13]

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[6] Ss. 366.041(1) and 366.06(1), F.S.
[7] S. 366.075, F.S.
[8] S. 366.91, F.S.
[9] S. 366.91(2)(e), F.S. The term also includes waste heat from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.
[10] Office of Energy Efficiency & Renewable Energy, *Alternative Fuels Data Center – Renewable Natural Gas Production*, U.S. Department of Energy, https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Jan. 27, 2024).
[11] Ch. 2021-178, Laws of Fla., codified at s. 366.91(2)(f) and (9), F.S.
[12] Section 366.96(7), F.S., provides that after the PSC approves a utility's transmission and distribution storm protection plan, proceeding with actions to implement the plan shall not constitute or be evidence of imprudence. Furthermore, this section provides that The PSC shall conduct an annual proceeding to determine the utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. If the PSC determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. S. 366.96(7), F.S.
[13] Section 366.96(8), F.S., provides that annual transmission and distribution storm protection plan costs may not include costs recovered through the public utility's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the PSC. S. 366.96(8), F.S.

Under the bill, the PSC may decide if the experimental mechanism is conducted in an annual proceeding. The PSC must adopt rules to implement and administer the provisions of the bill and propose a rule as soon as practicable, but no later than October 31, 2024.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 366.075, F.S., relating to experimental transitional rates.

Section 2: Provides an effective date.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to propose and adopt a rule to implement the bill within a specified timeline.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to energy infrastructure investment;
3 amending s. 366.075, F.S.; authorizing the Public
4 Service Commission to establish an experimental
5 mechanism to facilitate certain energy infrastructure
6 investment; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (3) is added to section 366.075,
11 Florida Statutes, to read:
12 366.075 Experimental and transitional rates.—
13 (3) The commission may establish an experimental mechanism
14 to facilitate energy infrastructure investment consistent with
15 the structure set forth in s. 366.96(7) and (8), the intent of
16 s. 366.91(1), and the definition in s. 366.91(2)(f). The
17 commission shall have discretion to determine whether such
18 mechanism is conducted in an annual proceeding. The commission
19 shall adopt rules to implement and administer this section and
20 shall propose a rule for adoption as soon as practicable but no
21 later than October 31, 2024.
22 Section 2. This act shall take effect July 1, 2024.

CODING: Words stricken are deletions; words underlined are additions.

Energy, Communications & Cybersecurity Subcommittee
PCS for HB 683 by Rep. Yeager
Energy Infrastructure Investment

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Yeager (line 21):

- Revises the date by which the Public Service Commission must propose a rule for adoption to January 1, 2025.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Committee/Subcommittee hearing bill: Energy, Communications &
2 Cybersecurity Subcommittee
3 Representative Yeager offered the following:
4
5 **Amendment**
6 Remove line 21 and insert:
7 later than January 1, 2025.