

1 SB220
2 168824-6
3 By Senators Hightower, Glover and Albritton
4 RFD: County and Municipal Government
5 First Read: 12-MAR-15

1 SB220

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4 ENROLLED, An Act,

5 To allow a county, municipality, or improvement
6 district to adopt a program to issue bonds, notes, or other
7 types of financing methods to finance improvements to certain
8 real properties through assessments on the property tax bill,
9 for the purpose of increasing energy efficiency and community
10 resilience to storm-related events; to authorize a local
11 government to impose assessments to fund qualifying
12 improvements for qualified projects; to require a local
13 government to designate areas where projects would be
14 completed; to provide procedures for adoption of a program; to
15 provide for the hiring of program administrators and staff; to
16 authorize fees to offset costs; to provide for the contractual
17 obligations of the local government and the record owner of
18 the affected real property; to require notice to certain
19 property owners; to provide that assessments are a lien on
20 real property; to provide for enforcement; and to provide for
21 further oversight by the state.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known and may be cited
24 as the Property Insurance and Energy Reduction Act of Alabama.

1 Section 2. For the purposes of this act, the
2 following words shall have the following meanings:

3 (1) COSTS OF A QUALIFIED PROJECT. All costs
4 including, but not limited to, the following:

5 a. All costs of acquisition, by purchase or
6 otherwise, construction, assembly, installation, modification,
7 renovation, or rehabilitation incurred in connection with any
8 qualified project or any part of any qualified project.

9 b. All costs of real property, fixtures, or personal
10 property used in or in connection with or necessary for any
11 qualified project or for any facilities related thereto,
12 including, but not limited to, the following:

13 1. The cost of all land, estates for years,
14 easements, rights, improvements, water rights, connections for
15 utility services, fees, franchises, permits, approvals,
16 licenses, and certificates.

17 2. The cost of securing any franchises, permits,
18 approvals, licenses, or certificates.

19 3. The cost of preparation of any application
20 therefor and the cost of all fixtures, machinery, equipment,
21 furniture, and other property used in or in connection with or
22 necessary for any qualified project.

23 c. All financing charges and fees and all interest
24 on revenue bonds, notes, or other obligations of a local
25 government which accrues or is paid prior to and during the

1 period of construction of a project and during any additional
2 period as the local government may reasonably determine to be
3 necessary to place the qualified project in operation.

4 d. All costs of engineering, surveying, and
5 architectural and legal services and all expenses incurred by
6 engineers, surveyors, architects, and attorneys in connection
7 with any qualified project.

8 e. All expenses for inspection of any qualified
9 project.

10 f. All fees of fiscal agents, paying agents, and
11 trustees for bondholders under any trust agreement, indenture
12 of trust, or similar instrument or agreement; all expenses
13 incurred by any fiscal agents, paying agents, and trustees and
14 all other costs and expenses incurred relative to the issuance
15 of any revenue bonds, notes, or other obligations for any
16 qualified project.

17 g. All fees of any type charged by a local
18 government in connection with any qualified project.

19 h. All expenses incurred in determining the
20 feasibility or practicability of any qualified project.

21 i. All costs of plans and specifications for any
22 qualified project.

23 j. All costs of title insurance and examinations of
24 title with respect to any qualified project.

1 k. Repayment of any assessments made for the advance
2 payment of any part of any of the costs provided in this
3 subdivision, including interest thereon and any other expenses
4 of the assessments.

5 l. Administrative expenses of the local government
6 and other expenses as may be necessary or incidental to any
7 qualified project or the financing thereof or the placing of
8 any project in operation.

9 m. The establishment of a fund or funds for the
10 creation of a debt service reserve, a renewal and replacement
11 reserve, or other funds or reserves as the local government
12 may approve with respect to the financing and operation of any
13 project and as may be authorized by any bond resolution, trust
14 agreement, indenture of trust, or similar instrument or
15 agreement pursuant to the provisions of which the issuance of
16 any revenue bonds, notes, or other obligations of the local
17 government may be authorized.

18 (2) DESIGNATED REGION. An area approved by a local
19 government for qualified projects pursuant to Section 3.

20 (3) LOCAL GOVERNMENT. Any incorporated municipality,
21 county, or improvement district in this state.

22 (4) PROGRAM. A program created under this act.

23 (5) QUALIFIED PROJECT or PROJECT. The installation
24 or modification of a qualifying improvement on real property

1 in a designated region under a program adopted by a local
2 government.

3 (6) QUALIFYING IMPROVEMENT. An improvement fixed to
4 or used upon an existing building or facility that is part of
5 the real property and intended to increase energy efficiency
6 and community resilience to storm-related events, such as high
7 winds and flooding, including, but not limited to, any of the
8 following:

9 a. Wind resistant improvements or programs that
10 qualify the structure for insurance discounts including, but
11 not limited to, the FORTIFIED Program or improvements that
12 increase the life safety of occupants during tornados
13 including, but not limited to, safe rooms that comply with the
14 International Code Congress (ICC-500) as mandated by the
15 Alabama Building Commission, or are manufactured or site built
16 under the supervision of a professional or producer member of
17 the National Storm Shelter Association (NSSA).

18 b. Energy conservation and efficiency improvement,
19 which is a measure to reduce consumption through conservation
20 or a more efficient use of electricity, natural gas, propane,
21 or other forms of energy on the real property, including, but
22 not limited to, any of the following:

- 23 1. Air sealing.
- 24 2. Installation of insulation.

1 3. Installation of energy-efficient heating,
2 cooling, or ventilation systems.

3 4. Building modifications to increase the use of
4 daylight.

5 5. Replacement of windows.

6 6. Installation of energy controls or energy
7 efficient lighting systems.

8 7. Installation of electric vehicle charging
9 equipment.

10 8. Installation of efficient lighting equipment.

11 9. Other improvements that lead to demonstrable
12 savings.

13 c. Flood mitigation, including, but not limited to,
14 any of the following:

15 1. The raising of a structure above the base flood
16 elevation to eliminate flood damage.

17 2. Installation of a flood diversion apparatus.

18 3. Electrical, mechanical, plumbing, or other system
19 improvements that reduce flood damage.

20 4. Improvements to mitigate or eliminate the
21 potential for microbial growth, or reduce flood insurance
22 premiums.

23 5. Any other improvement that reduces repetitive
24 loss that is recognized by the National Flood Insurance

1 Program, Community Rating System, or the Federal Emergency
2 Management Agency (FEMA).

3 (7) REAL PROPERTY. Real property excludes
4 residential property consisting of fewer than five units and
5 individual residential units of condominiums or cooperatives
6 and limited common elements and common elements attached to or
7 related to the condominium or cooperative units.

8 Section 3. (a) (1) The governing body of a local
9 government may designate an area of the local government as a
10 region within which the local government may provide financing
11 to the record owners of real property and impose assessments
12 for the repayment of costs of a qualified project.

13 (2)a. A local government may issue bonds or notes or
14 use other financing to finance qualified projects under this
15 act.

16 b. Bonds or notes issued under this section are not
17 general obligations of the local government, but are payable
18 from any of the following:

19 1. Payments of assessments on benefited real
20 property in one or more designated regions under this act.

21 2. Reserves established by the local government from
22 grants, bonds, or net proceeds or other lawfully available
23 funds.

24 3. Municipal bond insurance, lines of credit, public
25 or private guaranties, standby bond purchase agreements,

1 collateral assignments, mortgages, or any other available
2 means of providing credit support or liquidity.

3 (b) An area designated as a region by the governing
4 body of a local government under this section:

5 (1) May include the entire local government.

6 (2) Must be located wholly within the local
7 government's jurisdiction.

8 (c) A local government may designate more than one
9 region. If multiple regions are designated, the regions may be
10 separate, overlapping, or coterminous.

11 (d) This act does not apply to residential property
12 consisting of fewer than five units or individual residential
13 units of condominiums or cooperatives or limited common
14 elements and common elements attached to or related to the
15 condominium or cooperative units.

16 Section 4. (a) To establish a program under this
17 act, the governing body of a local government must take the
18 following actions in the following order:

19 (1) Adopt a resolution of intent that includes all
20 of the following:

21 a. A finding that financing qualified projects
22 through assessments is a valid public purpose.

23 b. A statement that the local government intends to
24 make assessments to repay financing for qualified projects
25 available to real property owners.

1 c. A description of the types of qualified projects
2 eligible for the program.

3 d. A description of the boundaries of the designated
4 region.

5 e. A statement of the time and place for a public
6 hearing on the proposed program.

7 (2) Hold a public hearing at which the public may
8 comment on the proposed program.

9 (3) Adopt a resolution establishing the program and
10 the terms of the program, including a description of each
11 aspect of the program that may be amended only after another
12 public hearing is held.

13 (b) Subject to the terms of the resolution
14 establishing the program, the governing body of a local
15 government may amend a program by resolution.

16 (c) A local government may do both of the following:

17 (1) Hire and set the compensation of a program
18 administrator and program staff.

19 (2) Contract for professional services necessary to
20 administer a program.

21 (d) A local government may impose fees to offset the
22 costs of administering a program. The fees authorized by this
23 subsection may be assessed as any of the following:

24 (1) A program application fee paid by the real
25 property owner requesting to participate in a program.

1 (2) A component of the interest rate on the
2 assessment in the written contract between the local
3 government and the real property owner.

4 (3) A combination of subdivisions (1) and (2).

5 Section 5. (a) A real property owner in a designated
6 region may apply to a local government under a program for
7 funding to finance a qualified project and enter into a
8 written contract with the local government. Costs of the
9 project incurred by the real property owner or the local
10 government for such purposes may be collected as an
11 assessment, as authorized in Section 3.

12 (b) A local government may enter into a partnership
13 with one or more other local governments for the purpose of
14 providing and financing qualified projects.

15 (c) A qualified program may be administered by a
16 for-profit or nonprofit organization on behalf of and at the
17 discretion of the local government.

18 (d) A local government may incur debt for the
19 purpose of providing the improvements, payable from revenues
20 received from the improved real property, or any other
21 available revenue source authorized by law.

22 (e) A local government may enter into a contract
23 only with the record owner of the affected real property in a
24 designated region. A contract entered into pursuant to this
25 section or a summary memorandum of the contract must be

1 recorded in the public records of the court of probate in the
2 county in which the real property is located by the sponsoring
3 unit of local government within five days after the execution
4 of the contract. The recorded agreement must provide
5 constructive notice that the assessment to be levied on the
6 real property constitutes a lien as described in Section 7.
7 The recorded agreement also must provide a legal description
8 of the real property covered by the lien, the amount secured
9 by the lien, the maturity date for payment of all amounts
10 secured by the lien, the names and addresses of the current
11 owners of the real property subject to the assessment, the
12 person or entity owed the assessment, the person or entity
13 filing the notice, and a reference to the statutory assessment
14 lien provided under this act.

15 (f) Prior to entering into a contract, the local
16 government shall reasonably determine all of the following:

17 (1) That all property taxes and any other
18 assessments levied on the same bill as property taxes are paid
19 and have not been delinquent for the preceding three years or
20 the real property owner's period of ownership, whichever is
21 less.

22 (2) That there are no involuntary liens, including,
23 but not limited to, construction liens on the real property.

24 (3) That no notices of default or other evidence of
25 property-based-debt delinquency have been recorded during the

1 preceding three years or the real property owner's period of
2 ownership, whichever is less.

3 (4) That the real property owner is current on all
4 mortgage debt on the property.

5 (5) That the improvements are not in excess of the
6 increased value of the real property by reason of special
7 benefits derived from the qualifying improvements.

8 (g) A qualifying improvement shall be affixed to an
9 existing building or facility that is part of the real
10 property and shall constitute an improvement to the building
11 or facility or a fixture attached to the building or facility.

12 (h) An installation of a qualifying improvement
13 requiring a license or certification of work under applicable
14 law or building code must be performed by a contractor or
15 evaluator properly certified, licensed, or registered in this
16 state.

17 (i) (1) The total amount of any assessment for real
18 property under this section may not exceed 20 percent of the
19 just value of the real property as determined by the county
20 property appraiser.

21 (2) Notwithstanding subdivision (1), an assessment
22 for a qualifying improvement that is supported by an energy,
23 wind or flood mitigation audit is not subject to the limits in
24 this subsection if the audit demonstrates that the annual
25 energy or insurance savings from the qualified improvement

1 equals or exceeds the annual repayment amount of the non-ad
2 valorem assessment. For residential structures, the energy
3 audit shall be conducted by a professional with one or more of
4 the following qualifications or certifications: Residential
5 Energy Services Network Home Energy Rating Systems (HERS),
6 Building Performance Institute Building Analyst (BPI), AEE
7 Residential Energy Auditor (REA), or Professional Engineer
8 with specific experience in energy efficiency. For commercial
9 and industrial facilities, the energy audit shall be conducted
10 by a professional with one or more of the following
11 qualifications or certifications: AEE Certified Energy
12 Manager (CEM), AEE Certified Energy Auditor (CEA), or
13 Professional Engineer with specific experience in energy
14 efficiency.

15 Section 6. (a) (1) Before entering into a written
16 contract with a local government, the real property owner
17 shall provide, or the local government shall obtain, a
18 verified recordable copy of written consent and subordination
19 agreement signed by the holder of each existing mortgage or
20 other lien on the relevant real property stating that the
21 mortgagee or other lienholder consents to the imposition of
22 the assessment and that the priority of the mortgage or other
23 lien is subordinated to the assessment lien in a form and
24 substance acceptable to each mortgagee and other lienholder.
25 The consent and subordination agreement must be in a form that

1 may be recorded in the appropriate recording office in the
2 county or counties where the real property is located, and the
3 consent and subordination agreement with the owner's
4 assessment contract shall be recorded in that office.

5 (2) This subsection does not limit in any way the
6 rights or authority of any mortgagee or other lienholder under
7 any agreement or applicable law.

8 (b) At or before the time a purchaser executes a
9 contract for the sale and purchase of any real property for
10 which a non-ad valorem assessment has been levied under this
11 act and has an unpaid balance due, the seller shall give the
12 prospective purchaser a written disclosure statement in the
13 following form, which shall be set forth in the contract or in
14 a separate writing:

15 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY AND
16 RESILIENCE TO STORM-RELATED EVENTS. This real property being
17 purchased is located within the jurisdiction of a local
18 government that has placed an assessment on the real property
19 pursuant to Section 3. The assessment is for a qualifying
20 improvement to the real property relating to energy efficiency
21 and community resilience to storm-related events, such as high
22 winds and flooding and is not based on the value of the real
23 property. You are encouraged to contact the county property
24 appraiser's office to learn more about this and other
25 assessments that may be provided by law.

1 Section 7. (a) An assessment under this act and any
2 interest or penalties on the assessment:

3 (1) Is a lien against the real property on which the
4 assessment is imposed from the date on which the notice of
5 contractual assessment is recorded.

6 (2) Subject to the requirement in Section 6(a)(1) to
7 obtain and record in the proper recording office an executed
8 consent and subordination agreement from existing mortgagees
9 and other lienholders, has the same priority status as a lien
10 for any other ad valorem or non-ad valorem tax.

11 (3) Is a lien that runs with the real property, and
12 the portion of the assessment under the assessment contract
13 that has not yet become due is not eliminated by foreclosure
14 of a property tax lien.

15 (b) The assessment lien may be enforced by the local
16 government in the same manner that an ad valorem or non-ad
17 valorem tax lien against real property may be enforced by the
18 local government with all redemption rights provided by
19 Section 40-10-1 et seq. or other applicable law to remain in
20 effect.

21 (c) Delinquent installments of the assessments incur
22 interest and penalties in the same manner as delinquent ad
23 valorem taxes.

1 (d) A local government may recover costs and
2 expenses, including attorney's fees, in a suit to collect a
3 delinquent installment of an assessment.

4 (e) Provided, however, that in any action to enforce
5 an assessment lien, the person or entity enforcing the
6 assessment lien must serve the holders of all mortgages and
7 other liens with notice about the enforcement action at least
8 60 days before any hearing or other action is taken with
9 respect to the enforcement action. Service upon a domestic or
10 foreign corporation or other entity shall be by serving the
11 registered agent of the entity if a registered agent has been
12 appointed; otherwise service shall be in accordance with Rule
13 4 of the Alabama Rules of Civil Procedure.

14 Section 8. A local government, combination of local
15 governments, the State or designee, may establish a loss
16 reserve fund. The loss reserve fund may be established for
17 the purposes of paying delinquent assessments caused by the
18 failure of a real property owner to fulfill their obligations
19 under an assessment.

20 Section 9. The Governor may appoint an existing
21 state agency to exercise regulatory jurisdiction over programs
22 and activities under this act. The state agency shall have
23 the authority to adopt reasonable rules, interpretations, and
24 guidances, consistent with the laws of this state, as may be
25 necessary to carry out this act over which the agency has

1 jurisdiction, including the development and administration of
2 programs created under this act. The state agency shall
3 provide initial rules or guidance within 12 months after the
4 effective date of this act, or later if additional time is
5 needed by the agency, and, in any event, before any local
6 government can establish a program. The state agency also is
7 authorized to develop a statewide program for local government
8 participation at any time. In developing any program guidance,
9 the state agency shall seek input from industry stakeholders
10 such as banks, real estate, insurance, contractors, and other
11 relevant interests.

12 Section 10. The imposition of an assessment pursuant
13 to this act is to be made solely at the request of the owner
14 of record of real property within a designated region. A
15 local government shall not compel a person who owns real
16 property in a designated region to enter into a contract to
17 repay the financing of any cost or assessment through
18 assessments under this act.

19 Section 11. Nothing in this act, nor any program
20 adopted in accordance with the procedures established
21 hereunder, shall alter, amend, or affect the rights, duties,
22 and obligations of any electric supplier or the regulation or
23 governance of any such entity.

1 Section 12. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB220

Senate 19-MAY-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 04-JUN-15

By: Senator Hightower