

1 A bill to be entitled
2 An act relating to financing improvements to real
3 property; amending s. 163.08, F.S.; revising
4 legislative intent; defining and revising terms;
5 authorizing a residential or commercial property owner
6 to apply to a local government for funding to finance
7 an improvement and to enter into a financing agreement
8 with the local government; providing that a non-ad
9 valorem assessment on certain commercial property is
10 subject to a certain fee; requiring a delinquent
11 assessment with a nongovernmental lessee to be
12 enforced in the manner provided by law; specifying
13 requirements of the financing agreement for government
14 commercial property; specifying the determinations a
15 local government must make before entering into a
16 financing agreement for commercial properties;
17 authorizing a financing agreement to be executed for
18 commercial property under certain circumstances;
19 restricting what improvements may be covered in
20 certain agreements between local governments and
21 commercial property owners; specifying requirements
22 for a local government before entering into a
23 financing agreement; revising notice requirements
24 regarding an owner's intent to enter into a financing
25 agreement; revising the seller's disclosure statement

26 | for commercial properties offered for sale; providing
 27 | construction; providing an effective date.

28 |

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

30 |

31 | Section 1. Paragraph (b) of subsection (1) and subsections
 32 | (2), (4), (8), (9), (10), (12), (13), and (14) of section
 33 | 163.08, Florida Statutes, are amended, and subsection (17) is
 34 | added to that section, to read:

35 | 163.08 Supplemental authority for improvements to real
 36 | property.—

37 | (1)

38 | (b) The Legislature finds that all energy-consuming-
 39 | improved properties that are not using energy conservation
 40 | strategies contribute to the burden affecting all improved
 41 | property resulting from fossil fuel energy production. Improved
 42 | property ~~that has been~~ retrofitted with energy-related
 43 | qualifying improvements receives the special benefit of
 44 | alleviating the property's burden from energy consumption. All
 45 | improved properties not protected from wind damage by wind
 46 | resistance qualifying improvements contribute to the burden
 47 | affecting all improved property resulting from potential wind
 48 | damage. Improved commercial property constructed or ~~that has~~
 49 | ~~been~~ retrofitted with resiliency qualifying improvements and
 50 | improved residential property retrofitted with wind ~~resistance~~

51 | qualifying improvements receive ~~receives~~ the special benefit of
52 | reducing the property's burden from potential ~~wind~~ damage.
53 | Further, the installation and operation of qualifying
54 | improvements not only benefit the affected properties for which
55 | the improvements are made, but also assist in fulfilling the
56 | goals of the state's energy and hurricane mitigation policies.
57 | In order to make qualifying improvements more affordable and
58 | assist property owners who wish to undertake such improvements,
59 | the Legislature finds that there is a compelling state interest
60 | in enabling property owners to voluntarily finance such
61 | improvements with local government assistance.

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

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

67 | 1. A multifamily residential property composed of five or
68 | more dwelling units;

69 | 2. A commercial real property;

70 | 3. An industrial building or property;

71 | 4. An agricultural property;

72 | 5. A nonprofit-owned property;

73 | 6. A long-term care facility, including nursing homes and
74 | assisted living facilities; or

75 | 7. A government commercial property.

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

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

83 (d) "Nongovernmental lessee" means a person or an entity
 84 other than a local government which leases government commercial
 85 property.

86 (e)-(b) "Qualifying improvements": improvement"

87 1. For residential property, includes any:

88 a.1- Energy conservation and efficiency improvement, which
 89 is a measure to reduce consumption through conservation or a
 90 more efficient use of electricity, natural gas, propane, or
 91 other forms of energy on the property, including, but not
 92 limited to, air sealing; installation of insulation;
 93 installation of energy-efficient heating, cooling, or
 94 ventilation systems; building modifications to increase the use
 95 of daylight; replacement of windows; installation of energy
 96 controls or energy recovery systems; installation of electric
 97 vehicle charging equipment; and installation of efficient
 98 lighting equipment.

99 b.2- Renewable energy improvement, which is the
 100 installation of any system in which the electrical, mechanical,

101 or thermal energy is produced from a method that uses one or
 102 more of the following fuels or energy sources: hydrogen, solar
 103 energy, geothermal energy, bioenergy, and wind energy.

104 ~~c.3.~~ Wind resistance improvement, which includes, but is
 105 not limited to:

106 ~~(I)a.~~ Improving the strength of the roof deck attachment;

107 ~~(II)b.~~ Creating a secondary water barrier to prevent water
 108 intrusion;

109 ~~(III)e.~~ Installing wind-resistant shingles;

110 ~~(IV)d.~~ Installing gable-end bracing;

111 ~~(V)e.~~ Reinforcing roof-to-wall connections;

112 ~~(VI)f.~~ Installing storm shutters; or

113 ~~(VII)g.~~ Installing opening protections.

114 2. For commercial property, includes any:

115 a. Energy conservation and efficiency improvement, which

116 is a measure to reduce consumption through conservation or a

117 more efficient use of electricity, natural gas, propane, or

118 other forms of energy on the property, including, but not

119 limited to, air sealing; installation of insulation;

120 installation of energy-efficient heating, cooling, or

121 ventilation systems; building modifications to increase the use

122 of daylight; replacement of windows; installation of energy

123 controls or energy recovery systems; installation of electric

124 vehicle charging equipment; installation of efficient lighting

125 equipment; or any other improvements necessary to achieve a

126 sustainable building rating or compliance with a national model
 127 green building code.

128 b. Renewable energy improvement, which is the installation
 129 of any system in which the electrical, mechanical, or thermal
 130 energy is produced from a method that uses one or more of the
 131 following fuels or energy sources: hydrogen, solar energy,
 132 geothermal energy, bioenergy, and wind energy.

133 c. Resiliency improvement, which includes, but is not
 134 limited to:

135 (I) Improving the strength of the roof deck attachment;

136 (II) Creating a secondary water barrier to prevent water
 137 intrusion;

138 (III) Installing wind-resistant shingles;

139 (IV) Installing gable-end bracing;

140 (V) Reinforcing roof-to-wall connections;

141 (VI) Installing storm shutters;

142 (VII) Installing opening protections;

143 (VIII) Creating or improving stormwater and flood
 144 resiliency, including shoreline improvements; or

145 (IX) Making any other improvements necessary to achieve a
 146 sustainable building rating or compliance with a national model
 147 resiliency standard and any improvements to a structure to
 148 achieve wind or flood insurance rate reductions, including
 149 building elevation.

150 (f) "Residential property" means a residential real

151 property of four or fewer dwelling units which will be or has
 152 been improved by a qualifying improvement.

153 (4) Subject to local government ordinance or resolution, a
 154 residential or commercial property owner may apply to the local
 155 government for funding to finance a qualifying improvement and
 156 enter into a financing agreement with the local government.
 157 Costs incurred by the local government for such purpose may be
 158 collected as a non-ad valorem assessment. A non-ad valorem
 159 assessment must ~~shall~~ be collected pursuant to s. 197.3632 and,
 160 notwithstanding s. 197.3632 (8) (a), is ~~shall~~ not ~~be~~ subject to
 161 discount for early payment. However, the notice and adoption
 162 requirements of s. 197.3632 (4) do not apply if this section is
 163 used and complied with, and the intent resolution, publication
 164 of notice, and mailed notices to the property appraiser, tax
 165 collector, and Department of Revenue required by s.
 166 197.3632(3) (a) may be provided on or before August 15 in
 167 conjunction with any non-ad valorem assessment authorized by
 168 this section, if the property appraiser, tax collector, and
 169 local government agree. A non-ad valorem assessment on a
 170 commercial property securing financing for a qualifying
 171 improvement, notwithstanding ss. 192.091 (2) (b) and
 172 197.3632(8) (c), is subject to a maximum annual fee of 1 percent
 173 of the annual non-ad valorem assessment collected or \$5,000,
 174 whichever is less. Notwithstanding this subsection, a delinquent
 175 assessment pursuant to a financing agreement with a

176 nongovernmental lessee must be enforced in the manner provided
 177 by law for taxes and assessments on property owned by
 178 nongovernmental lessees of government commercial property.

179 (8) A local government may enter into a financing
 180 agreement to finance or refinance a qualifying improvement only
 181 with the record owner of the affected property. For government
 182 commercial property, the financing agreement must be executed by
 183 the nongovernmental lessee with the written consent of the
 184 governmental lessor. Evidence of such consent must be provided
 185 to the local government. The financing agreement with a
 186 nongovernmental lessee must provide that the nongovernmental
 187 lessee is the only party obligated to pay the assessment. Any
 188 financing agreement entered into pursuant to this section or a
 189 summary memorandum of such agreement must ~~shall~~ be recorded in
 190 the public records of the county within which the property is
 191 located by the sponsoring unit of local government within 5 days
 192 after execution of the agreement. The recorded agreement
 193 provides ~~shall provide~~ constructive notice that the assessment
 194 to be levied on the property constitutes a lien of equal dignity
 195 to county taxes and assessments from the date of recordation.

196 (9)(a) Before entering into a financing agreement for a
 197 residential property, the local government shall reasonably
 198 determine that all of the following conditions have been met:

199 1. ~~that~~ All property taxes and any other assessments
 200 levied on the same bill as property taxes are paid and have not

201 | been delinquent for the preceding 3 years or the property
 202 | owner's period of ownership, whichever is less.~~†~~

203 | 2. ~~that~~ There are no involuntary liens, including, but not
 204 | limited to, construction liens on the property.~~†~~

205 | 3. ~~that~~ No notices of default or other evidence of
 206 | property-based debt delinquency have been recorded during the
 207 | preceding 3 years or the property owner's period of ownership,
 208 | whichever is less.~~†~~

209 | 4. ~~and that~~ The property owner is current on all mortgage
 210 | debt on the property.

211 | (b) Before entering into a financing agreement for a
 212 | commercial property, the local government shall reasonably
 213 | determine that all of the following conditions have been met:

214 | 1. All property taxes and any other assessments levied on
 215 | the same bill as property taxes are current.

216 | 2. There are no involuntary liens greater than \$10,000,
 217 | including, but not limited to, construction liens on the
 218 | property.

219 | 3. No notices of default or other evidence of property-
 220 | based debt delinquency have been recorded and not released
 221 | during the preceding 3 years or the property owner's period of
 222 | ownership, whichever is less.

223 | 4. The property owner is current on all mortgage debt on
 224 | the property.

225 | (10) To constitute an improvement to the building or

226 | facility, a qualifying improvement must be ~~shall be~~ affixed to a
 227 | building or facility that is part of the property ~~and shall~~
 228 | ~~constitute an improvement to the building or facility~~ or a
 229 | fixture attached to the building or facility. A financing
 230 | agreement may be executed for qualifying improvements in the
 231 | construction of a commercial property before a certificate of
 232 | occupancy or similar evidence of substantial completion of new
 233 | construction or improvement is issued. Progress payments, or
 234 | payments made before completion, are allowed for commercial
 235 | properties, provided that the property owner subsequently
 236 | provides, upon request for a final progress payment
 237 | disbursement, written verification to the local government
 238 | confirming that the qualifying improvements are completed and
 239 | operating as intended. An agreement between a local government
 240 | and a qualifying residential property owner may not cover wind-
 241 | resistant ~~wind-resistance~~ improvements in buildings or
 242 | facilities under new construction or construction for which a
 243 | certificate of occupancy or similar evidence of substantial
 244 | completion of new construction or improvement has not been
 245 | issued.

246 | (12) (a) Without the consent of the holders or loan
 247 | servicers of any mortgage encumbering or otherwise secured by
 248 | the residential property, the total amount of any non-ad valorem
 249 | assessment for a property under this section may not exceed 20
 250 | percent of the just value of the property as determined by the

251 county property appraiser.

252 (b) Notwithstanding paragraph (a), a non-ad valorem
253 assessment for a qualifying improvement defined in sub-
254 subparagraph (2)(e)1.a. or sub-subparagraph (2)(e)1.b. on a
255 residential property subparagraph (2)(b)1. or subparagraph
256 (2)(b)2. that is supported by an energy audit is not subject to
257 the limits in this subsection if the audit demonstrates that the
258 annual energy savings from the qualified improvement equals or
259 exceeds the annual repayment amount of the non-ad valorem
260 assessment.

261 (c) Before entering into a financing agreement with a
262 commercial property owner, the local government must be in
263 receipt of the written consent of the current holders or loan
264 servicers of any mortgage that encumbers or is otherwise secured
265 by the commercial property or that will otherwise be secured by
266 the property at the time the financing agreement is executed by
267 the local government.

268 (13) At least 30 days before entering into a financing
269 agreement, the property owner shall provide to the holders or
270 loan servicers of any existing mortgages that encumber the
271 property, encumbering or that will otherwise be otherwise
272 secured by the property at the time the financing agreement is
273 executed by the local government, a notice of the owner's intent
274 to enter into a financing agreement together with the maximum
275 principal amount to be financed and the maximum annual

276 assessment necessary to repay that amount. A verified copy or
 277 other proof of such notice must ~~shall~~ be provided to the local
 278 government. A provision in any agreement between a mortgagee or
 279 other lienholder and a property owner, or otherwise now or
 280 hereafter binding upon a property owner, which allows for
 281 acceleration of payment of the mortgage, note, or lien or other
 282 unilateral modification solely as a result of entering into a
 283 financing agreement as provided for in this section is not
 284 enforceable. This subsection does not limit the authority of the
 285 holder or loan servicer to increase the required monthly escrow
 286 by an amount necessary to ~~annually~~ pay the annual ~~qualifying~~
 287 ~~improvement~~ assessment.

288 (14) At or before the time a purchaser executes a contract
 289 for the sale and purchase of any property for which a non-ad
 290 valorem assessment has been levied under this section and has an
 291 unpaid balance due, the seller shall give the prospective
 292 purchaser a written disclosure statement in either of the
 293 following forms ~~form~~, which must ~~shall~~ be set forth in the
 294 contract or in a separate writing.

295 (a) For a residential property:

296
 297 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
 298 RENEWABLE ENERGY, OR WIND RESISTANCE.—The property
 299 being purchased is located within the jurisdiction of
 300 a local government that has placed an assessment on

301 the property pursuant to s. 163.08, Florida Statutes.
302 The assessment is for a qualifying improvement to the
303 property relating to energy efficiency, renewable
304 energy, or wind resistance, and is not based on the
305 value of property. You are encouraged to contact the
306 county property appraiser's office to learn more about
307 this and other assessments that may be provided by
308 law.

309
310 (b) For a commercial property:

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312 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
313 RENEWABLE ENERGY, OR RESILIENCY.—The property being
314 purchased is located within the jurisdiction of a
315 local government that has placed an assessment on the
316 property pursuant to s. 163.08, Florida Statutes. The
317 assessment is for a qualifying improvement to the
318 property relating to energy efficiency, renewable
319 energy, or resiliency, and is not based on the value
320 of property. You are encouraged to contact the county
321 property appraiser's office to learn more about this
322 and other assessments that may be provided by law.

323
324 (17) This section is prospective only and does not affect
325 or amend any existing non-ad valorem assessment or any existing

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326 | interlocal agreement between local governments.

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