

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7179 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

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WITHDRAWN _____ (Y/N)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

1 Council/Committee hearing bill: Finance and Tax

2 Representative(s) Precourt offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 163.08, Florida Statutes, is created to
7 read:

8 163.08 Supplemental authority for improvements to real
9 property.-

10 (1)(a) In chapter 2008-227, Laws of Florida, the
11 Legislature amended the energy goal of the state comprehensive
12 plan to provide, in part, that the state shall reduce its energy
13 requirements through enhanced conservation and efficiency
14 measures in all end-use sectors and shall reduce atmospheric
15 carbon dioxide by promoting an increased use of renewable energy
16 resources. That act also declared it the public policy of the
17 state to play a leading role in developing and instituting
18 energy management programs that promote energy conservation,
19 energy security, and reduction of greenhouse gases. In addition

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20 to establishing policies to promote the use of renewable energy,
21 the Legislature provided for a schedule of increases in energy
22 performance of buildings subject to the Florida Energy
23 Efficiency Code for Building Construction. In chapter 2008-191,
24 Laws of Florida, the Legislature adopted new energy conservation
25 and greenhouse gas reduction comprehensive planning requirements
26 for local governments. In the 2008 general election, the voters
27 of this state approved a constitutional amendment authorizing
28 the Legislature, by general law, to prohibit consideration of
29 any change or improvement made for the purpose of improving a
30 property's resistance to wind damage or the installation of a
31 renewable energy source device in the determination of the
32 assessed value of residential real property.

33 (b) The Legislature finds that all energy-consuming-
34 improved properties not using energy conservation strategies
35 contribute to the burden affecting all improved property
36 resulting from fossil fuel energy production. Improved property
37 that has been retrofitted with energy-related qualifying
38 improvements receives the special benefit of alleviating the
39 property's burden from energy consumption. All improved
40 properties not protected from wind damage by wind resistance
41 qualifying improvements contribute to the burden affecting all
42 improved property resulting from potential wind damage. Improved
43 property that has been retrofitted with wind resistance
44 qualifying improvements receives the special benefit of reducing
45 the property's burden from potential wind damage. Further, the
46 installation and operation of qualifying improvements not only
47 benefit the affected properties for which the improvements are

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48 made, but also assist in fulfilling the goals of the state's
49 energy and hurricane mitigation policies. To make qualifying
50 improvements more affordable and assist property owners who wish
51 to undertake such improvements, there is a compelling state
52 interest in enabling property owners, on a voluntary basis, to
53 finance such improvements with local government assistance.

54 (c) The Legislature determines that the actions authorized
55 under this section, including, but not limited to, the financing
56 of qualifying improvements through the execution of financing
57 agreements and the related imposition of voluntary assessments
58 are reasonable and necessary to serve and achieve a compelling
59 state interest and are necessary for the prosperity and welfare
60 of the state and its property owners and inhabitants.

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

62 (a) "Local government" means a county or municipality.

63 (b) "Qualifying improvement" includes any:

64 1. "Energy conservation and efficiency improvement," which
65 means a measure to reduce consumption, through conservation or
66 more efficient use, of electricity, natural gas, propane, or
67 other forms of energy on the property, including, but not
68 limited to, air sealing; installation of insulation;
69 installation of energy-efficient heating, cooling, or
70 ventilation systems; building modifications to increase the use
71 of daylight; replacement of windows; installation of energy
72 controls or energy recovery systems; installation of electric
73 vehicle charging equipment; and installation of efficient
74 lighting equipment.

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75 2. "Renewable energy improvement," which means the
76 installation of any system whose electrical, mechanical, or
77 thermal energy is produced from a method that uses one or more
78 of the following fuels or energy sources: hydrogen, solar
79 energy, geothermal energy, bioenergy, and wind energy.

80 3. "Wind resistance improvement," which includes, but is
81 not limited to:

82 a. Improving the strength of the roof deck attachment;

83 b. Creating a secondary water barrier to prevent water
84 intrusion;

85 c. Installing wind-resistant shingles;

86 d. Installing gable-end bracing;

87 e. Reinforcing roof-to-wall connections;

88 f. Installing storm shutters; or

89 g. Installing opening protections.

90 (3) A local government may levy non-ad valorem assessments
91 to fund qualifying improvements.

92 (4) Subject to local government ordinance or resolution, a
93 property owner may apply to the local government for funding to
94 finance a qualifying improvement and enter into a financing
95 agreement with the local government. Costs incurred by the local
96 government for such purpose may be collected as a non-ad valorem
97 assessment. A non-ad valorem assessment shall be collected
98 pursuant to s. 197.3632. However, the notice and adoption
99 requirements of s. 197.3632(4) do not apply if this section is
100 used and complied with, and the initial resolution, publication
101 of notice, and mailed notices to the property appraiser, tax
102 collector, and Department of Revenue required by s.

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103 197.3632(3)(a) may be provided on or before August 15 in
104 conjunction with any non-ad valorem assessment authorized by
105 this section, if the property appraiser, tax collector, and
106 local government agree.

107 (5) Pursuant to this chapter or as otherwise provided by
108 law or pursuant to a local government's home rule power, a local
109 government may partner with one or more local governments for
110 the purpose of providing and financing qualifying improvements.

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

114 (7) A local government may incur debt for the purpose of
115 providing such improvements, payable from revenues received from
116 the improved property, or any other available revenue source
117 authorized by law.

118 (8) A local government may enter into a financing
119 agreement only with the record owner of the affected property.
120 Any financing agreement entered into pursuant to this act or a
121 summary memorandum thereof shall be recorded in the public
122 records of the county within which the property is located by
123 the sponsoring unit of local government within 5 days of
124 execution of the agreement. The recorded agreement shall
125 provide constructive notice that the assessment to be levied on
126 the property constitutes a lien of equal dignity to county taxes
127 and assessments from the date of recordation.

128 (9) Before entering into a financing agreement, the local
129 government shall reasonably determine that all property taxes
130 and any other assessments levied on the same bill as property

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131 taxes are paid and have not been delinquent for the preceding 3
132 years or the property owner's period of ownership, whichever is
133 less; that there are no involuntary liens, including, but not
134 limited to, construction liens on the property; that no notices
135 of default or other evidence of property-based debt delinquency
136 have been recorded during the preceding 3 years or the property
137 owner's period of ownership, whichever is less; and that the
138 property owner is current on all mortgage debt on the property.

139 (10) A qualifying improvement shall be affixed to a
140 building or facility that is part of the property and shall
141 constitute an improvement to the building or facility or a
142 fixture thereto. An agreement between a local government and a
143 qualifying property owner may not cover wind-resistance
144 improvements in buildings or facilities under new construction
145 or construction for which a certificate of occupancy or similar
146 evidence of substantial completion of new construction or
147 improvement has not been issued.

148 (11) Any work requiring a license under any applicable law
149 to make a qualifying improvement shall be performed by a
150 contractor properly certified or registered pursuant to part I
151 or part II of chapter 489.

152 (12) (a) Without the consent of the holders or loan
153 servicers of any mortgage encumbering or otherwise secured by
154 the property, the total amount of any non-ad valorem assessment
155 for a property under this section may not exceed 20 percent of
156 the just value of the property as determined by the county
157 property appraiser.

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158 (b) Notwithstanding paragraph (a), a non-ad valorem
159 assessment for a qualifying improvement defined in subparagraph
160 (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy
161 audit is not subject to the limits in this subsection if the
162 audit demonstrates that the annual energy savings from the
163 qualified improvement equals or exceeds the annual repayment
164 amount of the non-ad valorem assessment.

165 (13) At least 30 days before entering into a financing
166 agreement, the property owner shall provide to the holders or
167 loan servicers of any existing mortgages encumbering or
168 otherwise secured by the property a notice of the owner's intent
169 to enter into a financing agreement together with the maximum
170 principal amount to be financed and the maximum annual
171 assessment necessary to repay that amount. A verified copy or
172 other proof of such notice shall be provided to the local
173 government. A provision in any agreement between a mortgagee or
174 other lienholder and a property owner, or otherwise now or
175 hereafter binding upon a property owner, which allows for
176 acceleration of payment of the mortgage, note, or lien or other
177 unilateral modification solely as a result of entering into a
178 financing agreement as provided for in this section is not
179 enforceable. This subsection does not limit the authority of the
180 holder or loan servicer to increase the required monthly escrow
181 by an amount necessary to annually pay the qualifying
182 improvement assessment.

183 (14) Each contract for the initial sale of a parcel of
184 real property for which a non-ad valorem assessment has been
185 imposed under the authority of this section within the local

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186 government shall include, immediately prior to the space
187 reserved in the contract for the signature of the purchaser, the
188 following disclosure statement in boldfaced and conspicuous type
189 which is larger than the type in the remaining text of the
190 contract: "THE (Name of Local Government) HAS IMPOSED A NON-AD
191 VALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN
192 ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER
193 ASSESSMENTS PROVIDED FOR BY LAW."

194 (15) A provision in any agreement between a local
195 government and a public or private power or energy provider or
196 other utility provider is not enforceable to limit or prohibit
197 any local government from exercising its authority under this
198 section.

199 (16) This section is additional and supplemental to county
200 and municipal home rule authority and not in derogation of such
201 authority or a limitation upon such authority.

202 Section 2. This act shall take effect upon becoming a law.

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T I T L E A M E N D M E N T

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Remove the entire title and insert:

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An act relating to qualifying improvements to real
211 property; creating s. 163.08, F.S.; providing legislative
212 purposes and findings and intent; providing definitions;
213 authorizing a local government to levy non-ad valorem

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214 assessments to fund certain improvements; authorizing a
215 property owner to apply for funding and enter into a
216 financing agreement with a local government to finance
217 certain improvements; authorizing a local government to
218 collect moneys for such purposes through non-ad valorem
219 assessments; providing collection requirements;
220 authorizing local governments to partner with other local
221 governments to provide and finance certain improvements;
222 authorizing a qualifying improvement program to be
223 administered by a for-profit entity or not-for-profit
224 organization under certain circumstances; authorizing a
225 local government to incur debt payable from revenues
226 received from the improved property; providing a financing
227 restriction for local governments; requiring a financial
228 agreement to be recorded in a county's public records
229 within 5 days of execution of the agreement; specifying
230 responsibilities for local governments before entering
231 into financing agreements; requiring qualifying
232 improvements to be affixed to a building or facility on
233 the property and be performed by a properly certified or
234 registered contractor; excluding certain projects from
235 financing agreement coverage; limiting the amount of the
236 non-ad valorem assessment to 20 percent of the just value
237 of the property; providing exceptions; specifying
238 information provision requirements for property owners
239 before entering into financing agreements; prohibiting
240 acceleration of a mortgage under certain circumstances;
241 providing assessment disclosure requirements; specifying

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242 unenforceability of certain agreement provisions;
243 providing construction preserving a local government's
244 home rule authority; providing an effective date.
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