

Energy, Communications & Cybersecurity Subcommittee

Monday, March 13, 2023
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

Monday, March 13, 2023
3:00 pm – 6:00 pm
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 1151 Financial Improvements to Real Property by Amesty
- HB 1281 Preemption Over Utility Service Restrictions by Buchanan

V. Closing Remarks

VI. Adjournment

HB 1151

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 Financial Improvements to Real Property
SPONSOR(S): Amesty
TIED BILLS: **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Keating	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Ways & Means Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create 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 determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill makes several changes to Florida's PACE law, including:

- Expanding the types of improvements eligible for PACE financing;
- Modifying the requirements for commercial property to be eligible for PACE financing, including the addition of a requirement for mortgage holder consent;
- Providing that a PACE financing agreement on commercial property may be executed before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued;
- Authorizing progress payments, or payments made before completion, for commercial property;
- Limiting fees imposed on PACE assessments on commercial property; and
- Authorizing the use of PACE financing on government property leased for commercial uses.

The bill provides for prospective application only.

The bill does not appear to impact state revenues or state or local expenditures. The bill may have an indeterminate impact on local government revenues. *See* Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 2023.

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.[1] PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[2]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[3] The law[4] provides supplemental authority to local governments[5] 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.[6] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[7]

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.[8] 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."[9] 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,[10] 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 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.

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[1] For more information, *see* http://www.pacenation.org and http://floridapace.gov/ (last visited Mar. 5, 2023).
[2] 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 Mar. 5, 2023).
[3] Ch. 2010-139, Laws of Fla.
[4] S. 163.08, F.S.
[5] 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)."
[6] S. 163.08(4), F.S.
[7] S. 163.08(2)(b), F.S.
[8] S. 163.08(13), F.S.
[9] S. 163.08(15), F.S.
[10] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

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[11] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[12]

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.[13]

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.[14] 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.[15] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[16]

For example, Broward County authorizes the following PACE providers:[17]

- 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.
- 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.

[11] S. 163.01(7), F.S.
[12] Ch. 2012-117, Laws of Fla.
[13] S. 163.08(9), F.S.
[14] S. 163.08(12)(a), F.S.
[15] *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 Mar. 5, 2023).
[16] *See, e.g.,* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Mar.5, 2023).
[17] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf (last visited Mar. 5, 2023).

- 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.[18] Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.[19]

Costs incurred by a local government are collected as part of a PACE assessment.[20] Further, PACE assessments must be collected pursuant to s. 197.3632, F.S., which provides in part that tax collectors are entitled to receive a commission, on behalf of each special assessment district, of the actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted.[21]

Federal Housing Finance Agency and Super-Priority Liens

In 2010, and again in 2014,[22] 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.[23]

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.[24]

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[18] The Balance, *How PACE Loans Work, https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071* (last visited Mar. 5, 2023).
[19] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf (last visited Mar. 5, 2023).
[20] S. 163.08(4), F.S.
[21] *Id.*; ss. 197.3632(8)(c) and 192.091(2)(b)2., F.S. It is not clear if the costs incurred by a local government include the commissions that tax collectors are authorized to receive.
[22] 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 Mar. 5, 2023). *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 Mar. 5, 2023).
[23] "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 Mar. 5, 2023).
[24] *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.[25]

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.[26]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[27] 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.[28]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[29] 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.[30] 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.[31]

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.[32]

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

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[25] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.
[26] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[27] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[28] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[29] "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 fo reclosure." 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 Mar. 5, 2023).
[30] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[31] 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 Mar. 5, 2023).
[32] 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 Pro posed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).

- 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.[33]

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[34]

Effect of the Bill

Uses for PACE Financing

The bill expands the types of improvements eligible for PACE financing to add the following:

- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.
- Resiliency improvements, including creation of sea walls, creation or improvement of stormwater, flood, and wastewater management, and any other improvements necessary to achieve a sustainable building rating or compliance with a national model resiliency standard.

The bill also authorizes PACE financing to be used as a *refinance* tool. Further, the bill authorizes PACE financing to be used for wind-resistant improvements on *new construction* for property other than residential property.

Eligibility Requirements for PACE Financing

The bill modifies the existing eligibility requirements for commercial property[35] as follows:

- 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 PACE financing agreement with a commercial property owner, the local government must have the written consent of the current holders or servicers

[33] 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 Mar. 5, 2023).
[34] *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 Mar. 5, 2023).
[35] The bill defines "commercial property" to mean real property not defined as 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 nursing homes and assisted living facilities; or a government commercial property.

of any mortgage that encumbers or is otherwise secured by the property (or that will be secured by the property at the time the PACE financing agreement is executed by the local government).

The bill does not change the eligibility requirements for residential property.[36] The bill does not require mortgage holder consent for residential PACE financing.

Timing and Fees for Commercial PACE Financing

For qualifying improvements to commercial property, the bill provides that a PACE 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.

The bill provides that a PACE assessment on commercial property is subject to a maximum annual fee of 1 percent of the annual assessment collected or $5,000, whichever is less.

PACE Financing on Government Commercial Property

The bill defines "government commercial property" to mean real property owned by a local government and leased to a nongovernmental lessee[37] to be used as commercial property. The bill provides that a PACE 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 PACE program. The PACE financing agreement with the nongovernmental lessee must provide that the lessee is the only party obligated to pay the PACE assessment.

The bill specifies that a delinquent assessment under a PACE financing agreement with a nongovernmental lessee of government commercial property must be enforced in the same manner as other taxes and assessments on such lessees.

Other Provisions

The bill provides that it is prospective only and does not affect or amend any existing PACE assessment or interlocal agreement between local governments.

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, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[36] The bill defines "residential property" to mean a residential real property of four or fewer dwelling units which will be or has been improved by a qualifying improvement.

[37] The bill defines "nongovernmental lessee" to mean a person or an entity other than a local government which leases government commercial property.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill limits annual fees for PACE assessments on commercial property to the lesser of 1 percent or $5,000. Current law allows local governments to collect their costs to administer PACE financing as part of the PACE assessment. It is not clear whether these costs include the commission that tax collectors are entitled to receive by law to cover the actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted. Depending on the rate or amount of fees actually collected under current law for PACE assessments on commercial property, the bill may impact local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By expanding eligible uses for PACE financing, easing terms for commercial property PACE financing, and authorizing PACE financing for government commercial property, the bill may result in expanded use of PACE financing by residential, commercial, and government commercial property owners. In turn, private PACE providers may earn additional revenues on PACE loans. However, as a condition of PACE financing for commercial property, the bill requires consent of the holders or servicers or any mortgage that encumbers the property. This provision may moderate growth in PACE financing for commercial property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill expands the types of projects on residential real property that are eligible for PACE financing but does not address consumer issues that have surrounded the use of PACE financing for residential real property.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to financing improvements to real property; amending s. 163.08, F.S.; revising legislative intent; defining and revising terms; authorizing a residential or commercial property owner to apply to a local government for funding to finance an improvement and to enter into a financing agreement with the local government; providing that a non-ad valorem assessment on certain commercial property is subject to a certain fee; requiring a delinquent assessment with a nongovernmental lessee to be enforced in the manner provided by law; specifying requirements of the financing agreement for government commercial property; specifying the determinations a local government must make before entering into a financing agreement for commercial and residential properties; authorizing a financing agreement to be executed for commercial property under certain circumstances; restricting what improvements may be covered in certain agreements between local governments and residential property owners; limiting the amount of non-ad valorem assessment for certain residential property; providing an exception relating to non-ad valorem assessment for residential property that is supported by an energy audit; specifying

requirements for a local government before entering into a financing agreement; revising notice requirements regarding an owner's intent to enter into a financing agreement; revising the seller's disclosure statement for certain properties offered for sale; providing construction; providing an effective date.

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

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

163.08 Supplemental authority for improvements to real property.—

(1)

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property ~~that has been~~ retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind

resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property ~~that has been~~ retrofitted with resiliency ~~wind resistance~~ qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

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

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

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

2. A commercial real property;

3. An industrial building or property;

4. An agricultural property;

5. A nonprofit-owned property;

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

7. A government commercial property.

(b) "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.

(c) "Local government" means 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).

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

(e) ~~(b)~~ "Qualifying improvement" includes any:

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

lighting equipment; or any other improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.

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

3. Resiliency ~~Wind resistance~~ improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier, including sea walls, to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; ~~or~~

g. Installing opening protections;

h. Creating or improving stormwater, flood, and wastewater management; or

i. Making any other improvements necessary to achieve a sustainable building rating or compliance with a national model resiliency standard.

(f) "Residential property" means a residential real property of four or fewer dwelling units which will be or has

been improved by a qualifying improvement.

(4) Subject to local government ordinance or resolution, a residential or commercial property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment must ~~shall~~ be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), is ~~shall~~ not ~~be~~ subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree. A non-ad valorem assessment on a commercial property securing financing for a qualifying improvement, notwithstanding ss. 192.091(2)(b) and 197.3632(8)(c), is subject to a maximum annual fee of 1 percent of the annual non-ad valorem assessment collected or $5,000, whichever is less. Notwithstanding this subsection, a delinquent assessment pursuant to a financing agreement with a nongovernmental lessee must be enforced in the manner provided

by law for taxes and assessments on property owned by nongovernmental lessees of government commercial property.

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

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

1. ~~that~~ All property taxes and any other assessments levied on the same bill as property taxes are current. ~~paid and have not been delinquent for the preceding 3 years or the~~

~~property owner's period of ownership, whichever is less;~~

2. ~~that~~ There are no involuntary liens greater than $10,000, including, but not limited to, construction liens on the property.~~;~~

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

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

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

1. All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less.

2. There are no involuntary liens, including, but not limited to, construction liens on the property.

3. 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, whichever is less.

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

(10) To constitute an improvement to the building or facility, a qualifying improvement must be ~~shall be~~ affixed to a building or facility that is part of the property ~~and shall constitute an improvement to the building or facility~~ or a fixture attached to the building or facility. A financing agreement may be executed for qualifying improvements in the construction of a commercial property before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Progress payments, or payments made before completion, are allowed for commercial properties, provided that the property owner subsequently provides, upon request for a final progress payment disbursement, written verification to the local government confirming that the qualifying improvements are completed and operating as intended. An agreement between a local government and a qualifying residential property owner may not cover wind-resistant ~~wind-resistance~~ improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the residential property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20

percent of the just value of the property as determined by the county property appraiser.

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

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

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

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

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

(a) For a commercial property:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR RESILIENCY ~~WIND RESISTANCE~~. ~~—~~The property being purchased is located within the jurisdiction of a local government that has placed an

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

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

(b) For a residential property:

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

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

interlocal agreement between local governments.

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

Energy, Communications & Cybersecurity Subcommittee
HB 1151 by Rep. Amesty
Financial Improvements to Real Property

AMENDMENT SUMMARY
March 13, 2023

Amendment 1 by Rep. Amesty:

- Provides that only commercial property owners may use PACE financing for the additional types of qualifying improvements authorized by the bill (e.g., stormwater and flood resiliency improvements and improvements to achieve a sustainable building rating or to comply with a national model resiliency standard or green building code).
- Makes conforming changes and reorganizes portions of the bill to clarify that the bill does not impact residential PACE programs.

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	_____

Committee/Subcommittee hearing bill: Energy, Communications & Cybersecurity Subcommittee
Representative Amesty offered the following:

Amendment (with title amendment)

Remove lines 53-297 and insert:

damage. Improved commercial property constructed or ~~that has been~~ retrofitted with resiliency qualifying improvements and improved residential property retrofitted with wind ~~resistance~~ qualifying improvements receive ~~receives~~ the special benefit of reducing the property's burden from potential ~~wind~~ damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and

assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

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

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

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

2. A commercial real property;

3. An industrial building or property;

4. An agricultural property;

5. A nonprofit-owned property;

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

7. A government commercial property.

(b) "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.

(c) "Local government" means 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).

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

(e)~~(b)~~ "Qualifying improvements": ~~improvement"~~

1. For residential property, includes any:

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

b.~~2.~~ Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

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

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

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

(III) Installing wind-resistant shingles;

(IV) Installing gable-end bracing;

(V) Reinforcing roof-to-wall connections;

(VI) Installing storm shutters; or

(VII) Installing opening protections.

2. For commercial property, includes any:

a. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of efficient lighting equipment; or any other improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.

b. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or

more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

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

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

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

(III) Installing wind-resistant shingles;

(IV) Installing gable-end bracing;

(V) Reinforcing roof-to-wall connections;

(VI) Installing storm shutters; ~~or~~

(VII) Installing opening protections;

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

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

(f) "Residential property" means a residential real property of four or fewer dwelling units which will be or has been improved by a qualifying improvement.

(4) Subject to local government ordinance or resolution, a residential or commercial property owner may apply to the local government for funding to finance a qualifying improvement and

enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment must ~~shall~~ be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), is ~~shall~~ not ~~be~~ subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree. A non-ad valorem assessment on a commercial property securing financing for a qualifying improvement, notwithstanding ss. 192.091(2)(b) and 197.3632(8)(c), is subject to a maximum annual fee of 1 percent of the annual non-ad valorem assessment collected or $5,000, whichever is less. Notwithstanding this subsection, a delinquent assessment pursuant to a financing agreement with a nongovernmental lessee must be enforced in the manner provided by law for taxes and assessments on property owned by nongovernmental lessees of government commercial property.

(8) A local government may enter into a financing agreement to finance or refinance a qualifying improvement only

with the record owner of the affected property. For government commercial property, the financing agreement must be executed by the nongovernmental lessee with the written consent of the governmental lessor. Evidence of such consent must be provided to the local government. The financing agreement with a nongovernmental lessee must provide that the nongovernmental lessee is the only party obligated to pay the assessment. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement must ~~shall~~ be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement provides ~~shall provide~~ constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

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

1. ~~that~~ All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less.~~;~~

2. ~~that~~ There are no involuntary liens, including, but not limited to, construction liens on the property.~~;~~

3. ~~that~~ 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, whichever is less.~~;~~

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

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

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

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

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

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

(10) To constitute an improvement to the building or facility, a qualifying improvement must be ~~shall be~~ affixed to a building or facility that is part of the property ~~and shall constitute an improvement to the building or facility~~ or a fixture attached to the building or facility. A financing

agreement may be executed for qualifying improvements in the construction of a commercial property before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Progress payments, or payments made before completion, are allowed for commercial properties, provided that the property owner subsequently provides, upon request for a final progress payment disbursement, written verification to the local government confirming that the qualifying improvements are completed and operating as intended. An agreement between a local government and a qualifying residential property owner may not cover wind-resistant ~~wind-resistance~~ improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

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

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in sub-subparagraph (2)(e)1.a. or sub-subparagraph (2)(e)1.b. on a

residential property ~~subparagraph (2)(b)1. or subparagraph (2)(b)2.~~ that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

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

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages that encumber the property, ~~encumbering~~ or that will otherwise be ~~otherwise~~ secured by the property at the time the financing agreement is executed by the local government, a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice must ~~shall~~ be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or

hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to ~~annually~~ pay the annual ~~qualifying improvement~~ assessment.

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

(a) For a residential property:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the

value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(b) For a commercial property:

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

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

Remove lines 16-30 and insert:
financing agreement for commercial properties; authorizing a financing agreement to be executed for commercial property under certain circumstances;

restricting what improvements may be covered in certain agreements between local governments and commercial property owners; specifying requirements for a local government before entering into a financing agreement; revising notice requirements regarding an owner's intent to enter into a financing agreement; revising the seller's disclosure statement for commercial properties offered

HB 1281

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281 Preemption Over Utility Service Restrictions
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Walsh	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law. In contrast, special districts have only those powers expressly authorized by general or special law. County and municipal governments have broad authority to legislate on any matter that is not inconsistent with federal or state law.

A local government enactment is inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.

The bill prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of any major appliance, including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by:

- 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 appears to have no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2] Likewise, municipalities[3] have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[5] Special districts are created by general law,[6] special act,[7] local ordinance,[8] or by rule of the Governor and Cabinet.[9] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[10] As of March 10, 2023, there are 614 active dependent[11] special districts and 1,312 active independent special districts in Florida.[12]

Local Government Authority Over Matters Related to Utility and Energy Services

Many of the powers granted to local governments by general law relate, directly or indirectly, to the provision of utility or other energy services to property owners or utility customers in general or to the authority of local governments to provide these services themselves. These powers include, but may not be limited to, the authority to:

- Prepare and enforce comprehensive plans for development.[13]
- Issue development permits and orders.[14]
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[15]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[16]

[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[6] S. 189.031(3), F.S.
[7] *Id.*
[8] S. 189.02(1), F.S.
[9] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[10] *2020-2022 Local Gov't Formation Manual,* p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited March 10, 2023).
[11] Dependent special districts are under some control by a single county or municipality. S. 189.012(2), F.S. An independent special district is any district that is not a dependent district. S. 189.012(3), F.S. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.
[12] Florida Department of Economic Opportunity, Official List of Special Districts Online, *State Totals*, available at https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts (last visited March 10, 2023).
[13] S. 125.01(1)(g), F.S.
[14] Ss. 125.022, F.S. and 166.033, F.S.
[15] S. 125.01(1)(h), F.S.
[16] S. 125.01(1)(bb), F.S.

- Enter into contracts with utility companies or others for the supply of water, electricity, or telephone service to or in connection with any project.[17]
- Construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses,[18] construct such other buildings and facilities as may be required to properly and economically operate and maintain such works,[19] and make all necessary rules or regulations governing the use, control and operation of such works;[20]
- Contract with private companies for the right to construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses, including the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality, for up to 30 years, provided that the rates or charges to be made by the private company to the individual users of the utility are fixed by the municipality.[21]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[22]
- License the use of gas and power lines in rights-of-way.[23]
- Adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[24]

Further, general law provides a role for local governments in state proceedings related to the siting of certain new electrical power plants, transmission lines, and natural gas pipelines. Specifically, part II of ch. 403, F.S., requires local governments to provide a report to the Department of Environmental Protection (DEP) as to the consistency of proposed electrical power plants, transmission lines, and natural gas pipelines with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed facility, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations.[25]

Municipalities are authorized to levy a public service tax on the purchase of electricity, natural gas liquefied petroleum gas, and manufactured gas.[26]

As noted above, many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Some special districts provide these services under policies adopted by each special district.

State Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. State preemption precludes a local government from exercising authority in that particular area.[27]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[28] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[29] In cases where the

[17] S. 125.012(19), F.S.
[18] S. 180.06(8), F.S.
[19] S. 180.06(9), F.S.
[20] S. 180.13, F.S.
[21] S. 180.14, F.S.
[22] S. 125.01(1)(m), F.S.
[23] S. 125.42, F.S.
[24] S. 125.275, F.S.
[25] Ss. 403.507(2)(a)3., 403.526(2)(a)5., and 403.941, F.S.
[26] S. 166.231, F.S.
[27] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited March 10, 2023).
[28] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[29] *Mulligan*, 934 So. 2d at 1243.

Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[30] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[31]

Preemption Over Utility Service Restrictions

Section 366.032, F.S., expressly preempts the area of restricting utility services, prohibiting a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the 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.[32]

An electric utility is one which owns, maintains, or operates an electric generation, transmission or distribution system. An electric utility can be investor-owned, municipally-owned, or it can be a rural electric cooperative.[33] There are four investor-owned electric utilities in Florida: Florida Power & Light Company,[34] Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Corporation.[35] Additionally, there are thirty-four municipal electric utilities and seventeen rural electric cooperatives.[36] Further, the Florida Municipal Power Agency was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities.[37] Fuels that Florida electric utilities use to generate electric power include, but are not limited to: natural gas, nuclear, coal, and renewables like solar and biomass.[38]

A natural gas utility is a utility that supplies natural or manufactured gas, or liquefied gas with air admixture, or a similar gaseous substance by pipeline, to or for the public. A natural gas utility can be a gas public utility, gas district, or natural gas utility or municipality.[39] Currently, there are eight investor-owned natural gas utilities, twenty-seven municipally owned natural gas utilities, and four special gas districts.[40]

Liquified petroleum gas is any material which is composed predominately of any of the following hydcrocarbons, or mixtures: propane, propylene, butanes, and butylenes.[41] A category I liquid petroleum gas dealer is someone who sells or offers to sell by delivery, or at a stationary location, any

[30] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[31] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[32] S. 366.032, F.S.
[33] S. 366.02, F.S.
[34] FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022.
[35] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2022), p. 4, available at https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202022.pdf (last visited Mar. 11, 2023).
[36] *Id.* at 11-12.
[37] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, http://fmpa.com/about/members/ (last visited Mar. 11, 2023).
[38] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at. n. 35, p. 3.
[39] S. 366.04(3)(c), F.S.
[40] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at. n. 35, p. 13.
[41] S. 527.01(1), F.S.

liquified petroleum gas to a consumer for industrial, commercial, or domestic use.[42] A category II liquefied petroleum gas dispenser is a person who operates a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the consumer for industrial, commercial, or domestic use, and who sells, or offers to sell or lease equipment for the use of liquified petroleum gas.[43] A category III liquified petroleum gas cylinder exchange operator is a person who operates a storage facility used for the purpose of storing filled propane cylinders of certain capacities while awaiting sale to the consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.[44]

Effect of Proposed Changes

The bill creates an express preemption that prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of any major appliance, including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by:

- 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.

Under the bill, a board of a municipality or governmental entity is not prevented from adopting rules, regulations, and policies governing an electric or natural gas utility that it owns or operates and directly controls.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 366.032, relating to preemption over utility service restrictions.

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:

[42] This category also includes "any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders." S. 527.01(6), F.S.
[43] S. 527.01(7), F.S.
[44] S. 527.01(8), F.S.

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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the term “major appliance,” but this term is not defined beyond identifying stoves and grills.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to preemption over utility service restrictions; amending. s. 366.032, F.S.; preventing certain local governmental entities from enacting or enforcing a resolution, ordinance, rule, code, or policy or from taking any action that restricts or prohibits or has the effect of restricting or prohibiting the use of any major appliances; revising an exception to preemption; providing an effective date.

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

Section 1. Subsections (2) through (4) of section 366.032, Florida Statutes, are renumbered as (3) through (5), respectively, subsection (1) and present subsection (2) are amended, and a new subsection (2) is added to that section, to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following

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

entities to serve customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of any major appliances, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1).

(3) ~~(2)~~ Notwithstanding the restrictions of this section, this section does not prevent the board of a municipality or governmental entity which owns or operates and directly controls an electric or natural gas utility~~,~~ from passing rules,

regulations, or policies governing the utility.

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

Energy, Communications & Cybersecurity Subcommittee
HB 1281 by Rep. Buchanan
Preemption Over Utility Service Restrictions

AMENDMENT SUMMARY
March 13, 2023

Amendment 1 by Rep. Buchanan (line 39):

- Creates an exception for the enforcement of a provision pursuant to the Florida Building Code or the Florida Fire Prevention Code.

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	_____

Committee/Subcommittee hearing bill: Energy, Communications & Cybersecurity Subcommittee

Representative Buchanan offered the following:

Amendment (with title amendment)

Remove line 39 and insert:

(2) Except to the extent necessary to enforce the Florida Building Code adopted pursuant to s. 553.73 or the Florida Fire Prevention Code adopted pursuant to s. 633.202, a municipality, county, special district, or other

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

Remove line 4 and insert:

certain local governmental entities, subject to specified exceptions, from enacting