

1 SB220
2 165058-1
3 By Senators Hightower, Glover and Albritton
4 RFD: County and Municipal Government
5 First Read: 12-MAR-15

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8 SYNOPSIS: This bill would create the Property
9 Insurance and Energy Reduction Act of Alabama to
10 allow a county or municipality to adopt programs to
11 finance, through bonds or notes issued by the
12 governmental entity, necessary improvements to
13 properties in designated regions for the purpose of
14 increasing energy efficiency and resistance to
15 storm-related events, such as high winds and
16 flooding.

17 This bill would establish the procedures to
18 create a program, provide for the contractual
19 relationship between the local government and the
20 private property owner participating in the
21 program, and would provide that an unpaid
22 contractual assessment under the program would be a
23 lien on the affected property similar to ad valorem
24 tax liens.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To allow a county or municipality to adopt a program
4 to issue bonds or notes to finance loans to property owners
5 for making necessary improvements to properties for the
6 purpose of increasing energy efficiency and resistance to
7 storm-related events; to authorize a local government to
8 impose assessments to fund qualifying improvements for
9 qualified projects; to require a local government to designate
10 areas where projects would be completed; to provide procedures
11 for adoption of a program; to provide for the hiring of
12 program administrators and staff; to authorize fees to offset
13 costs; to provide for the contractual obligations of the local
14 government and the record owner of the affected property; to
15 require notice to certain property owners; to provide that
16 assessments are a lien on property; to provide for
17 enforcement.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

25 a. All costs of acquisition, by purchase or
26 otherwise, construction, assembly, installation, modification,

1 renovation, or rehabilitation incurred in connection with any
2 qualified project or any part of any qualified project.

3 b. All costs of real property, fixtures, or personal
4 property used in or in connection with or necessary for any
5 project or for any facilities related thereto, including, but
6 not limited to, the following:

7 1. The cost of all land, estates for years,
8 easements, rights, improvements, water rights, connections for
9 utility services, fees, franchises, permits, approvals,
10 licenses, and certificates.

11 2. The cost of securing any franchises, permits,
12 approvals, licenses, or certificates.

13 3. The cost of preparation of any application
14 therefor and the cost of all fixtures, machinery, equipment,
15 furniture, and other property used in or in connection with or
16 necessary for any project.

17 c. All financing charges and loan fees and all
18 interest on revenue bonds, notes, or other obligations of a
19 local government which accrues or is paid prior to and during
20 the period of construction of a project and during any
21 additional period as the local government may reasonably
22 determine to be necessary to place the project in operation.

23 d. All costs of engineering, surveying, and
24 architectural and legal services and all expenses incurred by
25 engineers, surveyors, architects, and attorneys in connection
26 with any project.

27 e. All expenses for inspection of any project.

1 f. All fees of fiscal agents, paying agents, and
2 trustees for bondholders under any trust agreement, indenture
3 of trust, or similar instrument or agreement; all expenses
4 incurred by any fiscal agents, paying agents, and trustees and
5 all other costs and expenses incurred relative to the issuance
6 of any revenue bonds, notes, or other obligations for any
7 project.

8 g. All fees of any type charged by a local
9 government in connection with any project.

10 h. All expenses incurred in determining the
11 feasibility or practicability of any project.

12 i. All costs of plans and specifications for any
13 project.

14 j. All costs of title insurance and examinations of
15 title with respect to any project.

16 k. Repayment of any loans made for the advance
17 payment of any part of any of the costs provided in this
18 subdivision, including interest thereon and any other expenses
19 of the loans.

20 l. Administrative expenses of the local government
21 and other expenses as may be necessary or incidental to any
22 project or the financing thereof or the placing of any project
23 in operation.

24 m. The establishment of a fund or funds for the
25 creation of a debt service reserve, a renewal and replacement
26 reserve, or other funds or reserves as the local government
27 may approve with respect to the financing and operation of any

1 project and as may be authorized by any bond resolution, trust
2 agreement, indenture of trust, or similar instrument or
3 agreement pursuant to the provisions of which the issuance of
4 any revenue bonds, notes, or other obligations of the local
5 government may be authorized.

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

8 (3) LOCAL GOVERNMENT. Any incorporated municipality
9 or any county in this state.

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

11 (5) QUALIFIED PROJECT or PROJECT. The installation
12 or modification of a qualifying improvement on property in a
13 designated region under a program adopted by a local
14 government.

15 (6) QUALIFYING IMPROVEMENT. A permanent improvement
16 fixed to real property and intended to increase energy
17 efficiency and resistance to storm-related events, such as
18 high winds and flooding, including, but not limited to, any of
19 the following:

20 a. Wind resistant improvements, including, but not
21 limited to, any of the following:

22 1. Improvements to the strength of the roof deck
23 attachment.

24 2. Creation of a secondary water barrier to prevent
25 water intrusion.

26 3. Installation of wind-resistant shingles.

27 4. Installation of gable-end bracing.

1 5. Reinforcement of roof-to-wall connections.

2 6. Installation of storm shutters.

3 7. Installation of opening protections.

4 b. Energy conservation and efficiency improvement,
5 which is a measure to reduce consumption through conservation
6 or a more efficient use of electricity, natural gas, propane,
7 or other forms of energy on the property, including, but not
8 limited to, any of the following:

9 1. Air sealing.

10 2. Installation of insulation.

11 3. Installation of energy-efficient heating,
12 cooling, or ventilation systems.

13 4. Building modifications to increase the use of
14 daylight.

15 5. Replacement of windows.

16 6. Installation of energy controls or energy
17 efficient lighting systems.

18 7. Installation of electric vehicle charging
19 equipment.

20 8. Installation of efficient lighting equipment.

21 c. Flood mitigation, including the raising of a
22 structure above the base flood elevation and installing a
23 flood diversion apparatus.

24 Section 3. (a) (1) The governing body of a local
25 government may designate an area of the local government as a
26 region within which the local government may loan money to the

1 record owners of real property and impose assessments for the
2 repayment of costs of a qualified project.

3 (2)a. A local government may issue bonds or notes to
4 finance qualified projects under this act.

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

8 1. Payments of assessments on benefited property in
9 one or more designated regions under this act.

10 2. Reserves established by the local government from
11 grants, bonds, or net proceeds or other lawfully available
12 funds.

13 3. Municipal bond insurance, lines of credit, public
14 or private guaranties, standby bond purchase agreements,
15 collateral assignments, mortgages, or any other available
16 means of providing credit support or liquidity.

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

19 (1) May include the entire local government.

20 (2) Must be located wholly within the local
21 government's jurisdiction.

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

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

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

3 a. A finding that financing qualified projects
4 through assessments is a valid public purpose.

5 b. A statement that the local government intends to
6 make assessments to repay financing for qualified projects
7 available to property owners.

8 c. A description of the types of qualified projects
9 eligible for the program.

10 d. A description of the boundaries of the designated
11 region.

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

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

16 (3) Adopt a resolution establishing the program and
17 the terms of the program, including a description of each
18 aspect of the program that may be amended only after another
19 public hearing is held.

20 (b) Subject to the terms of the resolution
21 establishing the program, the governing body of a local
22 government may amend a program by resolution.

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

24 (1) Hire and set the compensation of a program
25 administrator and program staff.

26 (2) Contract for professional services necessary to
27 administer a program.

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

4 (1) A program application fee paid by the property
5 owner requesting to participate in a program.

6 (2) A component of the interest rate on the
7 assessment in the written contract between the local
8 government and the property owner.

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

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

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

20 (c) A qualified project may be administered by a
21 for-profit or nonprofit organization on behalf of and at the
22 discretion of the local government.

23 (d) A local government may incur debt for the
24 purpose of providing the improvements, payable from revenues
25 received from the improved property, or any other available
26 revenue source authorized by law.

1 (e) A local government may enter into a contract
2 only with the record owner of the affected property in a
3 designated region. A contract entered into pursuant to this
4 section or a summary memorandum of the contract must be
5 recorded into the public records of the court of probate in
6 the county in which the property is located by the sponsoring
7 unit of local government within five days after the execution
8 of the contract. The recorded agreement must provide
9 constructive notice that the assessment to be levied on the
10 property constitutes a lien of equal dignity to other county
11 and municipal taxes and assessments from the date of
12 recordation.

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

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

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

21 (3) That no notices of default or other evidence of
22 property-based-debt delinquency have been recorded during the
23 preceding three years or the property owner's period of
24 ownership, whichever is less.

25 (4) That the property owner is current on all
26 mortgage debt on the property.

1 (g) A qualifying improvement shall be affixed to the
2 building or facility that is part of the property and shall
3 constitute an improvement to the building or facility or a
4 fixture attached to the building or facility. An agreement
5 between a local government and a property owner regarding a
6 qualified project may not cover wind-resistance improvements
7 in buildings or facilities under new construction or
8 construction for which a certificate of occupancy or similar
9 evidence of substantial completion of new construction or
10 improvement has not been issued.

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

16 (i) (1) Without the consent of the holders or loan
17 servicers of any mortgage encumbering or otherwise secured by
18 the property, the total amount of any assessment for a
19 property under this section may not exceed 20 percent of the
20 just value of the property as determined by the county
21 property appraiser.

22 (2) Notwithstanding subdivision (1), an assessment
23 for a qualifying improvement that is supported by an energy
24 audit is not subject to the limits in this subsection if the
25 audit demonstrates that the annual energy savings from the
26 qualified improvement equals or exceeds the annual repayment
27 amount of the non-ad valorem assessment.

1 Section 6. (a) (1) At least 30 days before entering
2 into a written contract with a local government, the property
3 owner shall provide to the holders or loan servicers of any
4 existing mortgages encumbering or otherwise secured by the
5 property a notice of the owner's intent to enter into a
6 contract together with the maximum principal amount to be
7 financed and the maximum annual assessment necessary to repay
8 that amount.

9 (2) A verified copy or other proof of the notice
10 shall be provided to the local government. A provision in any
11 agreement between a mortgagee or other lien holder and a
12 property owner, or otherwise now or hereafter binding upon a
13 property owner, which allows for acceleration of payment of
14 the mortgage, note, or lien or other unilateral modification
15 solely as a result of entering into a financing agreement as
16 provided for in this section is not enforceable.

17 (3) This subsection does not limit the authority of
18 the holder or loan servicer to increase the required monthly
19 escrow by an amount necessary to annually pay the qualifying
20 improvement assessment.

21 (b) At or before the time a purchaser executes a
22 contract for the sale and purchase of any property for which a
23 non-ad valorem assessment has been levied under this act and
24 has an unpaid balance due, the seller shall give the
25 prospective purchaser a written disclosure statement in the
26 following form, which shall be set forth in the contract or in
27 a separate writing:

1 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY AND
2 RESISTANCE TO STORM-RELATED EVENTS. This property being
3 purchased is located within the jurisdiction of a local
4 government that has placed an assessment on the property
5 pursuant to Section 3. The assessment is for a qualifying
6 improvement to the property relating to energy efficiency and
7 resistance to storm-related events, such as high winds and
8 flooding and is not based on the value of the property. You
9 are encouraged to contact the county property appraiser's
10 office to learn more about this and other assessments that may
11 be provided by law.

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

14 (1) Is a first and prior lien against the real
15 property on which the assessment is imposed from the date on
16 which the notice of contractual assessment is recorded.

17 (2) Has the same priority status as a lien for any
18 other ad valorem tax.

19 (3) Is a lien that runs with the property, and the
20 portion of the assessment under the assessment contract that
21 has not yet become due is not eliminated by foreclosure of a
22 property tax lien.

23 (c) The assessment lien may be enforced by the local
24 government in the same manner that an ad valorem tax lien
25 against real property may be enforced by the local government.

1 (d) Delinquent installments of the assessments incur
2 interest and penalties in the same manner as delinquent ad
3 valorem taxes.

4 (e) A local government may recover costs and
5 expenses, including attorney's fees, in a suit to collect a
6 delinquent installment of an assessment.

7 Section 8. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.