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3 HOUSE FINANCIAL SERVICES COMMITTEE SUBSTITUTE FOR HB182
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8 SYNOPSIS: Under current law, a future advance
9 mortgage, which is created upon its execution, may
10 secure funds advanced at the time the mortgage is
11 executed as well as funds advanced in the future.

12 This bill would create the Future Advance
13 Mortgage Protection Act.

14 This bill would provide that future advance
15 mortgages are valid and enforceable when executed,
16 and further provide for the priority status of
17 advances made under a future advance mortgage.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to future advance mortgages; to add a new
24 Article 6, commencing with Section 35-10-120, to Chapter 10 of
25 Title 35 of the Code of Alabama 1975; to establish the Future
26 Advance Mortgage Protection Act; to provide that future
27 advance mortgages are valid and enforceable; and to provide

1 for the priority status of advances made under a future
2 advance mortgage.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. A new Article 6, commencing with Section
5 35-10-120, is added to Chapter 10 of Title 35 of the Code of
6 Alabama 1975, to read as follows:

7 Article 6. The Future Advance Mortgage Protection
8 Act.

9 §35-10-120.

10 This article shall be known and may be cited as The
11 Future Advance Mortgage Protection Act.

12 §35-10-121.

13 The Legislature finds and declares the following:

14 (1) There is prevalent use in this state of future
15 advance mortgages, which are mortgage loan arrangements in
16 which the borrower takes either none, or only a portion, of
17 the loan proceeds at the outset, but receives loan proceeds in
18 the future, thereby saving interest charges on the unadvanced
19 portion until it is needed.

20 (2) Future advance mortgage financing arrangements
21 are beneficial to borrowers and lenders.

22 (3) In order to protect future advance mortgages and
23 facilitate their continued use, both the validity and priority
24 of advances under these mortgages are due to be and are herein
25 clarified and established.

26 §35-10-122.

1 As used in this article, the following terms shall
2 have the following meanings:

3 (1) FUTURE ADVANCE. An advance of funds, extension
4 of credit, indebtedness, or loan made after the creation of a
5 future advance mortgage pursuant to a loan agreement, note,
6 mortgage, or other agreement.

7 (2) OBLIGATORY FUTURE ADVANCE. Either of the
8 following:

9 a. A future advance that the mortgagee is
10 contractually required to make, even though the making of the
11 advance may be conditioned upon the occurrence or existence,
12 or the failure to occur or exist, of any event or fact, even
13 though the mortgagee may waive or forbear the exercise of its
14 rights under the condition.

15 b. A future advance that the mortgagee makes to
16 protect its mortgage interest in the real property subject to
17 the mortgage, including, but not limited to, the payment of
18 taxes, assessments, insurance premiums, or maintenance
19 charges, the payment for the curing of waste of the mortgaged
20 property, or for indemnification obligations regarding
21 environmental liabilities, and the payment of expenses
22 incurred by reason of default, including attorneys' fees and
23 court costs.

24 (3) OPTIONAL FUTURE ADVANCE. A future advance made
25 by the mortgagee that is not an obligatory future advance.

1 (4) FUTURE ADVANCE MORTGAGE. A mortgage in which
2 future advances, whether obligatory or optional, are among the
3 secured indebtedness.

4 §35-10-123.

5 (a) A future advance mortgage is created at the time
6 of its execution without the requirement of any other
7 consideration and without regard to whether any advance of
8 loan proceeds has been made at the time of execution.

9 (b) All obligatory future advances made by a
10 mortgagee relate back to the time of the recording of the
11 future advance mortgage, or, if applicable, to the time of its
12 creation under Section 35-11-211, and are prior and superior
13 to any subsequently recorded mortgage, lien, or other
14 encumbrance, and to any other lien or right to a lien arising
15 or attaching after the time of recording of the future advance
16 mortgage, or, if applicable, after the time of its creation
17 under Section 35-11-211, except liens for real property taxes
18 and assessments for public improvements that have priority
19 under other provisions of law.

20 (c) (1) All optional future advances made by a
21 mortgagee, without actual knowledge of a subsequent mortgage,
22 lien, or other encumbrance, relate back to the time of the
23 recording of the future advance mortgage, or, if applicable,
24 to the time of its creation under Section 35-11-211, and are
25 prior and superior to any subsequently recorded mortgage,
26 lien, or other encumbrance, and to any other lien or right to
27 a lien arising or attaching after the time of recording of the

1 mortgage, or, if applicable, after the time of its creation
2 under Section 35-11-211, except liens for real property taxes
3 and assessments for public improvements that have priority
4 under other provisions of law.

5 (2) Optional future advances made by a mortgagee
6 after having actual knowledge of a subsequent mortgage, lien,
7 or other encumbrance do not have priority over the subsequent
8 mortgage, lien, or other encumbrance.

9 (3) For purposes of this subsection, if the
10 mortgagee is a corporation or other entity, it has actual
11 knowledge on the third business day after its agent authorized
12 by appointment or by law to receive service of process for the
13 mortgagee receives written notice of the subsequent mortgage,
14 lien, or other encumbrance by certified mail, return receipt
15 requested. If the mortgagee is an individual, he or she has
16 actual knowledge from the date of delivery of written notice
17 of the subsequent mortgage, lien, or other encumbrance by
18 personal service or from the date certified mail, return
19 receipt requested, is received either by the mortgagee or by
20 an agent authorized by appointment or by law to receive
21 service of process for the mortgagee.

22 §35-10-124.

23 (a) The provisions of Section 7-9A-334, which relate
24 to the priority of security interests in fixtures and crops,
25 and Section 7-9A-604, which relate to security agreements
26 covering real property or fixtures, are not affected by this
27 article.

1 (b) Nothing in this article is intended to limit or
2 restrict the obligations, indebtedness, liabilities,
3 covenants, disbursements, or advances that may be secured by
4 any mortgage.

5 Section 2. This act shall become effective January
6 1, 2020, following its passage and approval by the Governor,
7 or its otherwise becoming law.