SB220

168824-6

By Senators Hightower, Glover and Albritton

RFD: County and Municipal Government

First Read: 12-MAR-15
ENROLLED, An Act,

To allow a county, municipality, or improvement district to adopt a program to issue bonds, notes, or other types of financing methods to finance improvements to certain real properties through assessments on the property tax bill, for the purpose of increasing energy efficiency and community resilience to storm-related events; to authorize a local government to impose assessments to fund qualifying improvements for qualified projects; to require a local government to designate areas where projects would be completed; to provide procedures for adoption of a program; to provide for the hiring of program administrators and staff; to authorize fees to offset costs; to provide for the contractual obligations of the local government and the record owner of the affected real property; to require notice to certain property owners; to provide that assessments are a lien on real property; to provide for enforcement; and to provide for further oversight by the state.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Property Insurance and Energy Reduction Act of Alabama.
Section 2. For the purposes of this act, the following words shall have the following meanings:

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

   a. All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, or rehabilitation incurred in connection with any qualified project or any part of any qualified project.

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

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

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

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

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

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

e. All expenses for inspection of any qualified
project.

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

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

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

i. All costs of plans and specifications for any
qualified project.

j. All costs of title insurance and examinations of
title with respect to any qualified project.
k. Repayment of any assessments made for the advance payment of any part of any of the costs provided in this subdivision, including interest thereon and any other expenses of the assessments.

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

m. The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or other funds or reserves as the local government may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the local government may be authorized.

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

(3) LOCAL GOVERNMENT. Any incorporated municipality, county, or improvement district in this state.

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

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

(6) QUALIFYING IMPROVEMENT. An improvement fixed to
or used upon an existing building or facility that is part of
the real property and intended to increase energy efficiency
and community resilience to storm-related events, such as high
winds and flooding, including, but not limited to, any of the
following:

a. Wind resistant improvements or programs that
qualify the structure for insurance discounts including, but
not limited to, the FORTIFIED Program or improvements that
increase the life safety of occupants during tornados
including, but not limited to, safe rooms that comply with the
International Code Congress (ICC-500) as mandated by the
Alabama Building Commission, or are manufactured or site built
under the supervision of a professional or producer member of
the National Storm Shelter Association (NSSA).

b. 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 real property, including, but
not limited to, any of the following:

1. Air sealing.

2. Installation of insulation.
3. Installation of energy-efficient heating, cooling, or ventilation systems.

4. Building modifications to increase the use of daylight.

5. Replacement of windows.

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

7. Installation of electric vehicle charging equipment.

8. Installation of efficient lighting equipment.

9. Other improvements that lead to demonstrable savings.

c. Flood mitigation, including, but not limited to, any of the following:

1. The raising of a structure above the base flood elevation to eliminate flood damage.

2. Installation of a flood diversion apparatus.

3. Electrical, mechanical, plumbing, or other system improvements that reduce flood damage.

4. Improvements to mitigate or eliminate the potential for microbial growth, or reduce flood insurance premiums.

5. Any other improvement that reduces repetitive loss that is recognized by the National Flood Insurance
Program, Community Rating System, or the Federal Emergency Management Agency (FEMA).

(7) REAL PROPERTY. Real property excludes residential property consisting of fewer than five units and individual residential units of condominiums or cooperatives and limited common elements and common elements attached to or related to the condominium or cooperative units.

Section 3. (a)(1) The governing body of a local government may designate an area of the local government as a region within which the local government may provide financing to the record owners of real property and impose assessments for the repayment of costs of a qualified project.

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

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

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

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

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

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

(1) May include the entire local government.

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

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

(d) This act does not apply to residential property consisting of fewer than five units or individual residential units of condominiums or cooperatives or limited common elements and common elements attached to or related to the condominium or cooperative units.

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

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

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

   b. A statement that the local government intends to make assessments to repay financing for qualified projects available to real property owners.
c. A description of the types of qualified projects eligible for the program.

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

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

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

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

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

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

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

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

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

(1) A program application fee paid by the real property owner requesting to participate in a program.
(2) A component of the interest rate on the assessment in the written contract between the local government and the real property owner.

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

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

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

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

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

(e) A local government may enter into a contract only with the record owner of the affected real property in a designated region. A contract entered into pursuant to this section or a summary memorandum of the contract must be
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recorded in the public records of the court of probate in the
county in which the real property is located by the sponsoring
unit of local government within five days after the execution
of the contract. The recorded agreement must provide
constructive notice that the assessment to be levied on the
real property constitutes a lien as described in Section 7.
The recorded agreement also must provide a legal description
of the real property covered by the lien, the amount secured
by the lien, the maturity date for payment of all amounts
secured by the lien, the names and addresses of the current
owners of the real property subject to the assessment, the
person or entity owed the assessment, the person or entity
filing the notice, and a reference to the statutory assessment
lien provided under this act.

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

(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 three years or
the real 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 real property.

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

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

(5) That the improvements are not in excess of the
increased value of the real property by reason of special
benefits derived from the qualifying improvements.

(g) A qualifying improvement shall be affixed to an
existing building or facility that is part of the real
property and shall constitute an improvement to the building
or facility or a fixture attached to the building or facility.

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

(i)(1) The total amount of any assessment for real
property under this section may not exceed 20 percent of the
just value of the real property as determined by the county
property appraiser.

(2) Notwithstanding subdivision (1), an assessment
for a qualifying improvement that is supported by an energy,
wind or flood mitigation audit is not subject to the limits in
this subsection if the audit demonstrates that the annual
energy or insurance savings from the qualified improvement
equals or exceeds the annual repayment amount of the non-ad valorem assessment. For residential structures, the energy audit shall be conducted by a professional with one or more of the following qualifications or certifications: Residential Energy Services Network Home Energy Rating Systems (HERS), Building Performance Institute Building Analyst (BPI), AEE Residential Energy Auditor (REA), or Professional Engineer with specific experience in energy efficiency. For commercial and industrial facilities, the energy audit shall be conducted by a professional with one or more of the following qualifications or certifications: AEE Certified Energy Manager (CEM), AEE Certified Energy Auditor (CEA), or Professional Engineer with specific experience in energy efficiency.

Section 6. (a)(1) Before entering into a written contract with a local government, the real property owner shall provide, or the local government shall obtain, a verified recordable copy of written consent and subordination agreement signed by the holder of each existing mortgage or other lien on the relevant real property stating that the mortgagee or other lienholder consents to the imposition of the assessment and that the priority of the mortgage or other lien is subordinated to the assessment lien in a form and substance acceptable to each mortgagee and other lienholder. The consent and subordination agreement must be in a form that
may be recorded in the appropriate recording office in the county or counties where the real property is located, and the consent and subordination agreement with the owner’s assessment contract shall be recorded in that office.

(2) This subsection does not limit in any way the rights or authority of any mortgagee or other lienholder under any agreement or applicable law.

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

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY AND RESILIENCY TO STORM-RELATED EVENTS. This real property being purchased is located within the jurisdiction of a local government that has placed an assessment on the real property pursuant to Section 3. The assessment is for a qualifying improvement to the real property relating to energy efficiency and community resilience to storm-related events, such as high winds and flooding and is not based on the value of the real 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.
Section 7. (a) An assessment under this act and any interest or penalties on the assessment:

(1) Is a lien against the real property on which the assessment is imposed from the date on which the notice of contractual assessment is recorded.

(2) Subject to the requirement in Section 6(a)(1) to obtain and record in the proper recording office an executed consent and subordination agreement from existing mortgagees and other lienholders, has the same priority status as a lien for any other ad valorem or non-ad valorem tax.

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

(b) The assessment lien may be enforced by the local government in the same manner that an ad valorem or non-ad valorem tax lien against real property may be enforced by the local government with all redemption rights provided by Section 40-10-1 et seq. or other applicable law to remain in effect.

(c) Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent ad valorem taxes.
(d) A local government may recover costs and 
expenses, including attorney's fees, in a suit to collect a 
delinquent installment of an assessment.

(e) Provided, however, that in any action to enforce 
an assessment lien, the person or entity enforcing the 
assessment lien must serve the holders of all mortgages and 
other liens with notice about the enforcement action at least 
60 days before any hearing or other action is taken with 
respect to the enforcement action. Service upon a domestic or 
foreign corporation or other entity shall be by serving the 
registered agent of the entity if a registered agent has been 
appointed; otherwise service shall be in accordance with Rule 
4 of the Alabama Rules of Civil Procedure.

Section 8. A local government, combination of local 
governments, the State or designee, may establish a loss 
reserve fund. The loss reserve fund may be established for 
the purposes of paying delinquent assessments caused by the 
failure of a real property owner to fulfill their obligations 
under an assessment.

Section 9. The Governor may appoint an existing 
state agency to exercise regulatory jurisdiction over programs 
and activities under this act. The state agency shall have 
the authority to adopt reasonable rules, interpretations, and 
guidances, consistent with the laws of this state, as may be 
necessary to carry out this act over which the agency has
jurisdiction, including the development and administration of programs created under this act. The state agency shall provide initial rules or guidance within 12 months after the effective date of this act, or later if additional time is needed by the agency, and, in any event, before any local government can establish a program. The state agency also is authorized to develop a statewide program for local government participation at any time. In developing any program guidance, the state agency shall seek input from industry stakeholders such as banks, real estate, insurance, contractors, and other relevant interests.

Section 10. The imposition of an assessment pursuant to this act is to be made solely at the request of the owner of record of real property within a designated region. A local government shall not compel a person who owns real property in a designated region to enter into a contract to repay the financing of any cost or assessment through assessments under this act.

Section 11. Nothing in this act, nor any program adopted in accordance with the procedures established hereunder, shall alter, amend, or affect the rights, duties, and obligations of any electric supplier or the regulation or governance of any such entity.
Section 12. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

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Senate 19-MAY-15
I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 04-JUN-15

By: Senator Hightower