

## CHAPTER 2010-139

### Council Substitute for House Bill No. 7179

An act relating to qualifying improvements to real property; creating s. 163.08, F.S.; providing legislative purposes and findings and intent; providing definitions; authorizing a local government to levy non-ad valorem assessments to fund certain improvements; authorizing a property owner to apply for funding and enter into a financing agreement with a local government to finance certain improvements; authorizing a local government to collect moneys for such purposes through non-ad valorem assessments; providing collection requirements; authorizing local governments to partner with other local governments to provide and finance certain improvements; authorizing a qualifying improvement program to be administered by a for-profit entity or not-for-profit organization under certain circumstances; authorizing a local government to incur debt payable from revenues received from the improved property; providing a financing restriction for local governments; requiring a financial agreement to be recorded in a county's public records within 5 days after execution of the agreement; specifying responsibilities for local governments before entering into financing agreements; requiring qualifying improvements to be affixed to a building or facility on the property and be performed by a properly certified or registered contractor; excluding certain projects from financing agreement coverage; limiting the amount of the non-ad valorem assessment to a percentage of the just value of the property; providing exceptions; specifying information provision requirements for property owners before entering into financing agreements; prohibiting acceleration of a mortgage under certain circumstances; providing assessment disclosure requirements; specifying unenforceability of certain agreement provisions; providing construction preserving a local government's home rule authority; amending ss. 288.9602 and 288.9603, F.S.; revising legislative findings and declarations and definitions for purposes of the Florida Development Finance Corporation Act; amending s. 288.9604, F.S.; revising requirements for the establishment and organization of the Florida Development Finance Corporation; amending s. 288.9605, F.S.; revising the powers of the corporation; amending s. 288.9606, F.S.; revising requirements for the corporation's issuance of revenue bonds; amending s. 288.9607, F.S.; limiting the corporation's approval of guaranties for debt service for bonds or other indebtedness for any one capital project; deleting provisions for the corporation's investment of certain funds in the State Transportation Trust Fund; authorizing guarantes to be used in conjunction with federal guaranty programs; amending s. 288.9608, F.S.; creating the Energy, Technology, and Economic Development Guaranty Fund; providing for the deposit and use of certain moneys in the fund; deleting requirements for the corporation's debt service reserve account and Revenue Bond Guaranty Reserve Account; amending ss. 288.9609, 288.9610, 206.46, 215.47, 339.08, and 339.135, F.S.; conforming provisions to changes made by the act;

providing legislative findings; requiring the Department of Community Affairs and the Office of Tourism, Trade, and Economic Development, in consultation with the Florida Energy and Climate Commission, to submit recommendations to the Governor and Legislature relating to the Energy Economic Zone Pilot Program; requiring coordination with the pilot communities and clean technology industries in identifying certain incentives and strategies; amending s. 366.91, F.S.; revising the definition of the term “renewable energy”; providing an effective date.

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

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

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property’s resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(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 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.

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

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

(a) "Local government" means a county, a municipality, or a dependent special district as defined in s. 189.403.

(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.

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. 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 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.

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

(4) Subject to local government ordinance or resolution, a 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 shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), 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.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement 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.

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

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement 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 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) Before entering into a financing agreement, the local government shall reasonably determine 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; that there are no involuntary liens, including, but not limited to, construction liens on the property; 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; and that the property owner is current on all mortgage debt on the property.

(10) A qualifying improvement 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. An agreement between a local government and a qualifying property owner may not cover 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.

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

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the 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)(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.

(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 encumbering or otherwise secured by the property 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 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 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 the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RE-NEWABLE 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.

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

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

Section 2. Section 288.9602, Florida Statutes, is amended to read:

288.9602 Findings and declarations of necessity.—The Legislature finds and declares that:

(1) There is a need to enhance economic activity in the ~~cities and counties~~ of the state by attracting manufacturing, development, redevelopment of brownfield areas, business enterprise management, and other activities conducive to economic promotion in order to provide a stronger, more balanced, and stable economy in the ~~cities and counties~~ of the state.

(2) A significant portion of businesses located in the ~~cities and counties~~ of the state or desiring to locate in the ~~cities and counties~~ of the state encounter difficulty in obtaining financing on terms competitive with those available to businesses located in other states and nations or are unable to obtain such financing at all.

(3) The difficulty in obtaining such financing impairs the expansion of economic activity and the creation of jobs and income in communities throughout the state.

(4) The businesses most often affected by these financing difficulties are small businesses critical to the economic development of the ~~state cities and counties of Florida~~.

(5) The economic well-being of the people in, and the commercial and industrial resources of, ~~the cities and counties~~ of the state would be enhanced by the provision of financing to businesses on terms competitive with those available in the most developed financial markets worldwide.

(6) In order to improve the prosperity and welfare of ~~the cities and counties~~ of this state and its inhabitants, to improve and promote the financing of projects related to the economic development of ~~the cities and~~

~~counties~~ of this state, including redevelopment of brownfield areas, and to increase the purchasing power and opportunities for gainful employment of citizens of ~~the cities and counties~~ of this state, it is necessary and in the public interest to facilitate the financing of such projects as provided for in this act and to do so without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable.

(7) In order to promote and stimulate development and advance the business prosperity and economic welfare of ~~the cities and counties~~ of this state and its inhabitants; to encourage and assist new business and industry in this state through loans, investments, or other business transactions; to rehabilitate and assist existing businesses; to stimulate and assist in the expansion of all kinds of for-profit and not-for-profit business activity; and to create maximum opportunities for employment, encouragement of thrift, and improvement of the standard of living of the citizens of Florida, it is necessary and in the public interest to facilitate the cooperation and action between organizations, public and private, in the promotion, development, and conduct of all kinds of for-profit and not-for-profit business activity in the state.

(8) In order to efficiently and effectively achieve the purposes of this act, it is necessary and in the public interest to create a special development finance authority to cooperate and act in conjunction with public agencies of this state and local governments of this state, through interlocal agreements pursuant to the Florida Interlocal Cooperation Act of 1969, in the promotion and advancement of projects related to economic development, including redevelopment of brownfield areas, throughout the state.

(9) The purposes to be achieved by the special development finance authority through such projects and such financings of business and industry in compliance with the criteria and the requirements of this act are predominantly the public purposes stated in this section, and such purposes implement the governmental purposes under the State Constitution of providing for the health, safety, and welfare of the people of the state, ~~including implementing the purpose of s. 10(c), Art. VII of the State Constitution and simultaneously provide new and innovative means for the investment of public trust funds in accordance with s. 10(a), Art. VII of the State Constitution.~~

Section 3. Subsections (6), (11), and (12) of section 288.9603, Florida Statutes, are amended to read:

288.9603 Definitions.—

(6) “Debt service” shall mean for any bonds issued by the corporation or for any bonds or other form of indebtedness and for which a guaranty has been issued pursuant to ss. 288.9606, 288.9607, and 288.9608, for any period for which such determination is to be made, the aggregate amount of all

interest charges due or which shall become due on or with respect to such bonds or indebtedness during the period for which such determination is being made, plus the aggregate amount of scheduled principal payments due or which shall become due on or with respect to such bonds or indebtedness during the period for which such determination is being made. Scheduled principal payments may include only principal payments that are scheduled as part of the terms of the original bond or indebtedness issue and that result in the reduction of the outstanding principal balance of the bonds or indebtedness.

(11) “Guaranty agreement” means an agreement by and between the corporation and an applicant a public agency pursuant to the provisions of s. 288.9607.

(12) “Guaranty agreement fund” means the Energy, Technology, and Economic Development Revenue Bond Guaranty Fund Reserve Account established by the corporation pursuant to s. 288.9608.

Section 4. Section 288.9604, Florida Statutes, is amended to read:

288.9604 Creation of the authority.—

~~(1) Upon a finding of necessity by a city or county of this state, selected pursuant to subsection (2),~~ There is created a public body corporate and politic known as the “Florida Development Finance Corporation.” The corporation shall be constituted as a public instrumentality of ~~local government,~~ and the exercise by the corporation of the powers conferred by this act shall be deemed and held to be the performance of an essential public function. The corporation has the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement for any of the purposes of this act.

~~(2) A city or county of Florida shall be selected by a search committee of Enterprise Florida, Inc. This city or county shall be authorized to activate the corporation. The search committee shall be composed of two commercial banking representatives, the Senate member of the partnership, the House of Representatives member of the partnership, and a member who is an industry or economic development professional.~~

~~(2)(3) Upon activation of the corporation,~~ The Governor, subject to confirmation by the Senate, shall appoint the board of directors of the corporation, who shall be five in number. The terms of office for the directors shall be for 4 years from the date of their appointment. A vacancy occurring during a term shall be filled for the unexpired term. A director shall be eligible for reappointment. At least three of the directors of the corporation shall be bankers who have been selected by the Governor from a list of bankers who were nominated by Enterprise Florida, Inc., and one of the directors shall be an economic development specialist. The chairperson of the Florida Black Business Investment Board shall be an ex officio member of the board of the corporation.



(3)(4)(a) A director shall receive no compensation for his or her services, but is entitled to the necessary expenses, including travel expenses, incurred in the discharge of his or her duties. Each director shall hold office until his or her successor has been appointed.

(b) The powers of the corporation shall be exercised by the directors thereof. A majority of the directors constitutes a quorum for the purposes of conducting business and exercising the powers of the corporation and for all other purposes. Action may be taken by the corporation upon a vote of a majority of the directors present, unless in any case the bylaws require a larger number. Any person may be appointed as director if he or she resides, or is engaged in business, which means owning a business, practicing a profession, or performing a service for compensation or serving as an officer or director of a corporation or other business entity so engaged, within the state.

(c) The directors of the corporation shall annually elect one of their members as chair and one as vice chair. The corporation may employ a president, technical experts, and such other agents and employees, permanent and temporary, as it requires and determine their qualifications, duties, and compensation. For such legal services as it requires, the corporation may employ or retain its own counsel and legal staff. The corporation shall file with the governing body of each public agency with which it has entered into an interlocal agreement and with the Governor, the Speaker of the House of Representatives, the President of the Senate, the Minority Leaders of the Senate and House of Representatives, and the Auditor General, on or before 90 days after the close of the fiscal year of the corporation, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year.

(4)(5) The board may remove a director for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he or she has been given a copy of the charges at least 10 days before ~~prior to~~ such hearing and has had an opportunity to be heard in person or by counsel. The removal of a director shall create a vacancy on the board which shall be filled pursuant to subsection (4) (3).

Section 5. Section 288.9605, Florida Statutes, is amended to read:

288.9605 Corporation powers.—

(1) The powers of the corporation created by s. 288.9604 shall include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act.

(2) The corporation is authorized and empowered to:

(a) Have perpetual succession as a body politic and corporate and adopt bylaws for the regulation of its affairs and the conduct of its business.

- (b) Adopt an official seal and alter the same at its pleasure.
- (c) Maintain an office at such place or places as it may designate.
- (d) Sue and be sued in its own name and plead and be impleaded.
- (e) Enter into interlocal agreements pursuant to s. 163.01(7) with public agencies of this state for the exercise of any power, privilege, or authority consistent with the purposes of this act.
- (f) Issue, from time to time, revenue bonds, notes, or other evidence of indebtedness, including, but not limited to, taxable bonds and bonds the interest on which is exempt from federal income taxation, for the purpose of financing and refinancing any capital projects that promote economic development within the state, thereby benefitting the citizens of the state, ~~for applicants~~ and exercise all powers in connection with the authorization, issuance, and sale of bonds, subject to the provisions of s. 288.9606.
- (g) Issue bond anticipation notes in connection with the authorization, issuance, and sale of such bonds, pursuant to the provisions of s. 288.9606.
- (h) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers under the act.
- (i) Disseminate information about itself and its activities.
- (j) Acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, real property, together with any improvements thereon, or personal property for its administrative purposes or in furtherance of the purposes of this act, ~~together with any improvements thereon~~.
- (k) Hold, improve, clear, or prepare for development any such property.
- (l) Mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property.
- (m) Insure or provide for insurance of any real or personal property or operations of the corporation or any private enterprise against any risks or hazards, including the power to pay premiums on any such insurance.
- (n) Establish and fund a guaranty fund in furtherance of the purposes of this act.
- (o) Invest funds held in reserve or sinking funds or any such funds not required for immediate disbursement in property or securities in such manner as the board shall determine, subject to the authorizing resolution on any bonds issued, and to terms established in the investment agreement pursuant to ss. 288.9606, 288.9607, and 288.9608, and redeem such bonds as have been issued pursuant to s. 288.9606 at the redemption price established therein or purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(p) Borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government or the state, county, or other public agency body or from any sources, public or private, for the purposes of this act and give such security as may be required and enter into and carry out contracts or agreements in connection therewith; and include in any contract for financial assistance with the Federal Government or the state, county, or other public agency for, or with respect to, any purposes under this act and related activities such conditions imposed pursuant to federal laws as the county or municipality or other public agency deems reasonable and appropriate which are not inconsistent with the provisions of this act.

(q) Make or have all surveys and plans necessary for the carrying out of the purposes of this act, contract with any person, public or private, in making and carrying out such plans, and adopt, approve, modify, and amend such plans.

(r) Develop, test, and report methods and techniques and carry out demonstrations and other activities for the promotion of any of the purposes of this act.

(s) Apply for, accept, and utilize grants from the Federal Government or the state, county, or other public agency available for any of the purposes of this act.

(t) Make expenditures necessary to carry out the purposes of this act.

(u) Exercise all or any part or combination of powers granted in this act.

(v) Enter into investment agreements with the Florida Black Business Investment Board concerning the issuance of bonds and other forms of indebtedness and capital for the purposes of ss. 288.707-288.714.

(w) Determine the situations and circumstances for participation in partnerships by agreement with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfields Redevelopment Act for a limited state guaranty of revenue bonds, loan guarantees, or loan loss reserves.

Section 6. Subsections (3) and (5) of section 288.9606, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

288.9606 Issue of revenue bonds.—

(3) Bonds issued under this section shall be authorized by a public agency of this state pursuant to the terms of an interlocal agreement, unless such bonds are issued pursuant to subsection (7); may be issued in one or more series; and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority,

be executed in such manner, be payable in such medium of payments at such place or places, be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics as may be provided by the corporation interlocal agreement issued pursuant thereto. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the corporation may determine will effectuate the purpose of this act.

(5) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act, or the security therefor, any such bond reciting in substance that it has been issued by the corporation in connection with any purpose of the act shall be conclusively deemed to have been issued for such purpose, and such purpose shall be conclusively deemed to have been carried out in accordance with the act. The complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published only in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county where the public agencies which were initially a party to the interlocal agreement are located. Notice of such proceedings shall be published in the manner and the time required by s. 75.06, in Leon County and in each county where the public agencies which were initially a party to the interlocal agreement are located. Obligations of the corporation pursuant to a loan agreement as described in this subsection may be validated as provided in chapter 75. The validation of at least the first bonds approved by the corporation shall be appealed to the Florida Supreme Court. ~~The complaint in the validation proceeding shall specifically address the constitutionality of using the investment of the earnings accrued and collected upon the investment of the minimum balance funds required to be maintained in the State Transportation Trust Fund to guarantee such bonds. If such proceeding results in an adverse ruling and such bonds and guaranty are found to be unconstitutional, invalid, or unenforceable, then the corporation shall no longer be authorized to use the investment of the earnings accrued and collected upon the investment of the minimum balance of the State Transportation Trust Fund to guarantee any bonds.~~

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 377.803 or s. 366.91;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

Section 7. Section 288.9607, Florida Statutes, is amended to read:

288.9607 Guaranty of bond issues.—

(1) The corporation ~~may is hereby authorized to~~ approve or deny, by a majority vote of the membership of the directors, a guaranty of debt service payments for bonds or other indebtedness used to finance any capital project that promotes economic development in the state, including, but not limited to, those capital projects for which revenue bonds are the guaranty of any revenue bonds issued under pursuant to this act, if any such guaranty does not exceed 5 percent of the total aggregate principal amount of bonds or other indebtedness relating to any one capital project. The corporation may also use moneys deposited into the Energy, Technology, and Economic Development Guaranty Fund to satisfy requirements to obtain federal loan guarantees for capital projects authorized pursuant to this section. The guaranty may also be of the obligations of the corporation with respect to any letter of credit, bond insurance, or other form of credit enhancement provided by any person with respect to any revenue bonds issued by the corporation pursuant to this act.

(2) ~~Any applicant for financing from the corporation,~~ requesting a guaranty of the bonds issued by the corporation under this act must submit a guaranty application, in a form acceptable to the corporation, together with supporting documentation to the corporation as provided in this section.

(3) All applicants which have entered into a guaranty agreement with the corporation shall pay a guaranty premium on such terms and at such rates as the corporation shall determine before ~~prior to~~ the issuance of the guaranty bonds. The corporation may adopt such guaranty premium structures as it deems appropriate, including, without limitation, guaranty premiums which are payable one time upon the issuance of the guaranty bonds or annual premiums payable upon the outstanding principal balance of bonds or other indebtedness that is guaranteed from time to time. The premium payment may be collected by the corporation from any ~~the~~ lessee of the project involved, from the applicant, or from any other payee of any ~~the~~ loan agreement involved.

(4) All applications for a guaranty must acknowledge that as a condition to the issuance of the guaranty, the corporation may require that the financing must be secured by a mortgage or security interest on the property acquired which will have such priority over other liens on such property as may be required by the corporation, and that the financing must be guaranteed by such person or persons with such ownership interest in the applicant as may be required by the corporation.

(5) Personal financial records, trade secrets, or proprietary information of applicants delivered to or obtained by the corporation shall be confidential and exempt from the provisions of s. 119.07(1).

(6) If the application for a guaranty is approved by the corporation, the corporation and the applicant shall enter into a guaranty agreement. In accordance with the provisions of the guaranty agreement, the corporation guarantees to use the funds on deposit in its Energy, Technology, and Economic Development Guaranty Fund Revenue Bond Guaranty Reserve Account to meet debt service amortization payments on the bonds or indebtedness as they become due, in the event and to the extent that the applicant is unable to meet such payments ~~in accordance with the terms of the bond indenture when called to do so by the trustee of the bondholders, or to make similar payments to reimburse any person which has provided credit enhancement for the bonds and which has advanced funds to meet such~~ debt service amortization payments as they become due, if such guaranty of the corporation is limited to 5 percent of the total aggregate principal amount of bonds or other indebtedness relating to any one capital project. The corporation may also use moneys deposited in the Energy, Technology, and Economic Development Guaranty Fund to satisfy requirements to obtain federal loan guarantees for capital projects authorized under this section. If the applicant defaults on debt service bond amortization payments, the corporation may use funds on deposit in the Energy, Technology, and Economic Development Guaranty Fund Revenue Bond Guaranty Reserve Account to pay insurance, maintenance, and other costs which may be required for the preservation of any capital project or other collateral security for any bond or indebtedness issued to finance a capital project for which debt service payments are guaranteed by the corporation issued by the corporation, or to otherwise protect the reserve account from loss, or to minimize losses to the reserve account, in each case in such manner as may be deemed necessary and advisable by the corporation.

~~(7)(a) The corporation is authorized to enter into an investment agreement with the Department of Transportation and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(6)(b). Such investment shall be limited as follows:~~

~~1. Not more than \$4 million of the investment earnings earned on the investment of the minimum balance of the State Transportation Trust Fund in a fiscal year shall be at risk at any time on one or more bonds or series of bonds issued by the corporation.~~

~~2. The investment earnings shall not be used to guarantee any bonds issued after June 30, 1998, and in no event shall the investment earnings be used to guarantee any bond issued for a maturity longer than 15 years.~~

~~3. The corporation shall pay a reasonable fee, set by the State Board of Administration, in return for the investment of such funds. The fee shall not be less than the comparable rate for similar investments in terms of size and risk.~~

~~4.—The proceeds of bonds, or portions thereof, issued by the corporation for which a guaranty has been or will be issued pursuant to s. 288.9606, s. 288.9608, or this section used to make loans to any one person, including any related interests, as defined in s. 658.48, of such person, shall not exceed 20 percent of the principal of all such outstanding bonds of the corporation issued prior to the first composite bond issue of the corporation, or December 31, 1995, whichever comes first, and shall not exceed 15 percent of the principal of all such outstanding bonds of the corporation issued thereafter, in each case determined as of the date of issuance of the bonds for which such determination is being made and taking into account the principal amount of such bonds to be issued. The provisions of this subparagraph shall not apply when the total amount of all such outstanding bonds issued by the corporation is less than \$10 million. For the purpose of calculating the limits imposed by the provisions of this subparagraph, the first \$10 million of bonds issued by the corporation shall be taken into account.~~

~~5.—The corporation shall establish a debt service reserve account which contains not less than 6 months' debt service reserves from the proceeds of the sale of any bonds, or portions thereof, guaranteed by the corporation.~~

~~6.—The corporation shall establish an account known as the Revenue Bond Guaranty Reserve Account, the Guaranty Fund. The corporation shall deposit a sum of money or other cash equivalents into this fund and maintain a balance of money or cash equivalents in this fund, from sources other than the investment of earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund, not less than a sum equal to 1 year of maximum debt service on all outstanding bonds, or portions thereof, of the corporation for which a guaranty has been issued pursuant to ss. 288.9606, 288.9607, and 288.9608. In the event the corporation fails to maintain the balance required pursuant to this subparagraph for any reason other than a default on a bond issue of the corporation guaranteed pursuant to this section or because of the use by the corporation of any such funds to pay insurance, maintenance, or other costs which may be required for the preservation of any project or other collateral security for any bond issued by the corporation, or to otherwise protect the Revenue Bond Guaranty Reserve Account from loss while the applicant is in default on amortization payments, or to minimize losses to the reserve account in each case in such manner as may be deemed necessary or advisable by the corporation, the corporation shall immediately notify the Department of Transportation of such deficiency. Any supplemental funding authorized by an investment agreement entered into with the Department of Transportation and the State Board of Administration concerning the use of investment earnings of the minimum balance of funds is void unless such deficiency of funds is cured by the corporation within 90 days after the corporation has notified the Department of Transportation of such deficiency.~~

~~(b)—Unless specifically prohibited in the General Appropriations Act, the earnings accrued and collected upon the investment of the minimum balance~~

~~of funds required to be maintained in the State Transportation Trust Fund may continue to be used pursuant to paragraph (a).~~

(e) ~~The guaranty is shall not be a general obligation of the corporation or of the state, but is shall be a special obligation, which constitutes the investment of a public trust fund. In no event shall the guaranty constitute an indebtedness of the corporation, the state of Florida, or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Each guaranty agreement shall have plainly stated on the face thereof that it has been entered into under the provisions of this act and that it does not constitute an indebtedness of the corporation, the state, or any political subdivision thereof within any constitutional or statutory limitation, and that neither the full faith and credit of the state of Florida nor any of its revenues is pledged to meet any of the obligations of the corporation under such guaranty agreement. Each such agreement shall state that the obligation of the corporation under the guaranty shall be limited to the funds available in the Energy, Technology, and Economic Development Guaranty Fund Revenue Bond Guaranty Reserve Account as authorized by this section.~~

~~The corporation shall include, as part of the annual report prepared pursuant to s. 288.9610, a detailed report concerning the use of guaranteed bond proceeds for loans guaranteed or issued pursuant to any agreement with the Florida Black Business Investment Board, including the percentage of such loans guaranteed or issued and the total volume of such loans guaranteed or issued.~~

(8) In the event the corporation does not approve the application for a guaranty, the applicant shall be notified in writing of the corporation's determination that the application not be approved.

(9) The membership of the corporation is authorized and directed to conduct such investigation as it may deem necessary for promulgation of regulations to govern the operation of the guaranty program authorized by this section. The regulations may include such other additional provisions, restrictions, and conditions as the corporation, after its investigation referred to in this subsection, shall determine to be proper to achieve the most effective utilization of the guaranty program. This may include, without limitation, a detailing of the remedies that must be exhausted by the bondholders, ~~or a trustee acting on their behalf, or other credit provided before~~ prior to calling upon the corporation to perform under its guaranty agreement and the subrogation of other rights of the corporation with reference to the capital project and its operation or the financing in the event the corporation makes payment pursuant to the applicable guaranty agreement. The regulations promulgated by the corporation to govern the operation of the guaranty program may shall contain specific provisions with respect to the rights of the corporation to enter, take over, and manage all financed properties upon default. These regulations shall be submitted by set



~~forth the respective rights of the corporation to the Florida Energy and Climate Commission for approval and the bondholders in regard thereto.~~

~~(10) The guaranty program described in this section may be used by the corporation in conjunction with any federal guaranty programs described in s. 406 of the American Recovery and Reinvestment Act of 2009. All policies, procedures, and regulations of the guaranty program adopted by the corporation, to the extent such guaranty program of the corporation is used in conjunction with a federal guaranty program described in s. 406 of the American Recovery and Reinvestment Act of 2009, must be consistent with s. 406 of the American Recovery and Reinvestment Act of 2009.~~

Section 8. Section 288.9608, Florida Statutes, is amended to read:

288.9608 Creation and funding of the Energy, Technology, and Economic Development Guaranty Fund guaranty account.—

~~(1) The corporation shall establish a debt service reserve account which contains not less than 6 months' debt service reserves from the proceeds of the sale of any bonds guaranteed by the corporation. Funds in such debt service reserve account shall be used prior to funds in the Revenue Bond Guaranty Reserve Account established in subsection (2). The corporation shall make best efforts to liquidate collateralized property and draw upon personal guarantees, and shall utilize the Revenue Bond Guaranty Reserve Account prior to use of supplemental funding for the Guaranty Reserve Account under the provisions of subsection (3).~~

~~(2)(a) The corporation shall establish an account known as the Energy, Technology, and Economic Development Guaranty Fund Revenue Bond Guaranty Reserve Account, the Guaranty Fund. The corporation may shall deposit moneys a sum of money or other cash equivalents into the this fund and maintain a balance in the this fund, from general revenue funds of the state as are authorized for that purpose or any other designated funding sources not inconsistent with state law sources other than the State Transportation Trust Fund, not less than a sum equal to 1 year of maximum debt service on all outstanding bonds, or portions thereof, of the corporation for which a guaranty has been issued pursuant to ss. 288.9606, 288.9607, and 288.9608.~~

~~(2)(b) If the corporation determines that the moneys in the guaranty agreement fund are not sufficient to meet the obligations of the guaranty agreement fund, the corporation is authorized to use the necessary amount of any available moneys that it may have which are not needed for, then or in the foreseeable future, or committed to other authorized functions and purposes of the corporation. Any such moneys so used may be reimbursed out of the guaranty agreement fund if and when there are moneys therein available for the purpose.~~

~~(3)(c) The determination of when additional moneys will be needed for the guaranty agreement fund, the amounts that will be needed, and the~~

availability or unavailability of other moneys shall be made solely by the corporation in the exercise of its discretion. However, supplemental funding for the Guaranty Fund as described in subsection (3) shall be made in accordance with the investment agreement of the corporation and the Department of Transportation and the State Board of Administration.

~~(3)(a) If the corporation determines that the funds in the Guaranty Fund will not be sufficient to meet the present or reasonably projected obligations of the Guaranty Fund, due to a default on a loan made by the corporation from the proceeds of a bond issued by the corporation which is guaranteed pursuant to s. 288.9607(7), no later than 90 days before amortization payments are due on such bonds, the corporation shall notify the Secretary of Transportation and the State Board of Administration of the amount of funds required to meet, as and when due, all amortization payments for which the Guaranty Fund is obligated. The Secretary of Transportation shall immediately notify the Speaker of the House of Representatives, the President of the Senate, and the chairs of the Senate and House Committees on Appropriations of the amount of funds required, and the projected impact on each affected year of the adopted work program of the Department of Transportation.~~

~~(b) Within 30 days of the receipt of notification from the corporation, the Department of Transportation shall submit a budget amendment request to the Executive Office of the Governor pursuant to chapter 216, to increase budget authority to carry out the purposes of this section. Upon approval of said amendment, the department shall proceed to amend the adopted work program, if necessary, in accordance with the amendment. Within 60 days of the receipt of notification, and subject to approval of the budget authority, the Secretary of Transportation shall transfer, subject to the amount available from the source described in paragraph (c), the amount of funds requested by the corporation required to meet, as and when due, all amortization payments for which the Guaranty Fund is obligated. Any moneys so transferred shall be reimbursed to the Department of Transportation, with interest at the rate earned on investment by the State Treasury, from the funds available in the Guaranty Fund or as otherwise available to the corporation.~~

~~(c) Pursuant to s. 288.9607(7), the Secretary of Transportation and the State Board of Administration may make available for transfer to the Guaranty Fund, earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund. However, the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund which shall be subject to transfer shall be limited to those earnings accrued and collected on the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund for the fiscal year in which the notification is received by the secretary and fiscal years thereafter.~~

~~(4) If the corporation receives supplemental funding for the Guaranty Fund under the provisions of this section, then any proceeds received by the corporation with respect to a loan in default, including proceeds from the sale of collateral for such loan, enforcement of personal guarantees or other pledges to the corporation to secure such loan, shall first be applied to the obligation of the corporation to repay the Department of Transportation pursuant to this section. Until such repayment is complete, no new bonds may be guaranteed pursuant to this section.~~

~~(5) Prior to the use of the guaranty provided in this section, and on an annual basis, the corporation must certify in writing to the State Board of Administration and the Secretary of Transportation that it has fully implemented the requirements of this section and s. 288.9607 and the regulations of the corporation.~~

Section 9. Section 288.9609, Florida Statutes, is amended to read:

288.9609 Bonds as legal investments.—All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by the corporation pursuant to an interlocal agreement with a public agency of this state. Such bonds and obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize all persons, political subdivisions, and officers, public and private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Section 10. Section 288.9610, Florida Statutes, is amended to read:

288.9610 Annual reports of Florida Development Finance Corporation. By December 1 of each year, the Florida Development Finance Corporation shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader, ~~and the city or county activating the Florida Development Finance Corporation~~ a complete and detailed report setting forth:

- (1) The evaluation required in s. 11.45(3)(j).
- (2) The operations and accomplishments of the Florida Development Finance Corporation, including the number of businesses assisted by the corporation.

(3) Its assets and liabilities at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Section 11. Subsection (4) of section 206.46, Florida Statutes, is amended to read:

**206.46 State Transportation Trust Fund.—**

(4) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(6)(b). ~~Such investment shall be limited as provided in s. 288.9607(7).~~

Section 12. Subsection (14) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(14) The State Board of Administration, consistent with sound investment policy, may invest the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(6)(b). ~~Such investment shall be limited as provided in s. 288.9607(7).~~

Section 13. Subsection (3) of section 339.08, Florida Statutes, is amended to read:

**339.08 Use of moneys in State Transportation Trust Fund.—**

(3) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(6)(b). ~~Such investment shall be limited as provided in s. 288.9607(7).~~

Section 14. Paragraph (f) of subsection (7) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

**(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—**

(f) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund

pursuant to paragraph (b). Such investment shall be limited as provided in s. 288.9607(7).

Section 15. (1) The Legislature finds that the ability of the pilot communities designated under the Energy Economic Zone Pilot Program pursuant to s. 377.809, Florida Statutes, to provide incentives is essential to these communities attracting clean technology industries and investments to the state and establishing the base information necessary to assess whether to revise state policies and expand the pilot program to other communities.

(2) By February 1, 2011, the Department of Community Affairs and the Office of Tourism, Trade, and Economic Development, in consultation with the Florida Energy and Climate Commission, shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives of appropriate incentives and statutory revisions necessary to provide the pilot communities with the tools for accomplishing the goals of the pilot program. In developing their recommendations, the Department of Community Affairs and the Office of Tourism, Trade, and Economic Development, at a minimum, shall consider:

(a) Fiscal and regulatory incentives.

(b) A jobs tax credit and corporate property tax credit pursuant to chapter 220, Florida Statutes.

(c) Refunds and exemptions from the sales and use tax in chapter 212, Florida Statutes, for job creation, building materials, business property, and products used for clean technology industries and investments within the designated energy economic zones.

(3) The Department of Community Affairs and the Office of Tourism, Trade, and Economic Development shall also coordinate with the pilot communities and clean technology industries in identifying incentives and strategies that will help attract emerging clean technology industries and investments to the state.

Section 16. Paragraph (d) of subsection (2) of section 366.91, Florida Statutes, is amended to read:

366.91 Renewable energy.—

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

(d) “Renewable energy” means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

Section 17. This act shall take effect upon becoming a law.

Approved by the Governor May 27, 2010.

Filed in Office Secretary of State May 27, 2010.