

1 SB220  
2 168824-5  
3 By Senators Hightower, Glover and Albritton  
4 RFD: County and Municipal Government  
5 First Read: 12-MAR-15

1 SB220

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To allow a county, municipality, or improvement  
12 district to adopt a program to issue bonds, notes, or other  
13 types of financing methods to finance improvements to certain  
14 real properties through assessments on the property tax bill,  
15 for the purpose of increasing energy efficiency and community  
16 resilience to storm-related events; to authorize a local  
17 government to impose assessments to fund qualifying  
18 improvements for qualified projects; to require a local  
19 government to designate areas where projects would be  
20 completed; to provide procedures for adoption of a program; to  
21 provide for the hiring of program administrators and staff; to  
22 authorize fees to offset costs; to provide for the contractual  
23 obligations of the local government and the record owner of  
24 the affected real property; to require notice to certain  
25 property owners; to provide that assessments are a lien on

1 real property; to provide for enforcement; and to provide for  
2 further oversight by the state.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

24 3. The cost of preparation of any application  
25 therefor and the cost of all fixtures, machinery, equipment,

1 furniture, and other property used in or in connection with or  
2 necessary for any qualified project.

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

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

13 e. All expenses for inspection of any qualified  
14 project.

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

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

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

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

3 j. All costs of title insurance and examinations of  
4 title with respect to any qualified project.

5 k. Repayment of any assessments made for the advance  
6 payment of any part of any of the costs provided in this  
7 subdivision, including interest thereon and any other expenses  
8 of the assessments.

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

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

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

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

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

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

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

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

20           b. Energy conservation and efficiency improvement,  
21 which is a measure to reduce consumption through conservation  
22 or a more efficient use of electricity, natural gas, propane,  
23 or other forms of energy on the real property, including, but  
24 not limited to, any of the following:

25           1. Air sealing.

26           2. Installation of insulation.

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

3                   4. Building modifications to increase the use of  
4                   daylight.

5                   5. Replacement of windows.

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

8                   7. Installation of electric vehicle charging  
9                   equipment.

10                  8. Installation of efficient lighting equipment.

11                  9. Other improvements that lead to demonstrable  
12                  savings.

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

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

17                   2. Installation of a flood diversion apparatus.

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

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

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

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

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

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

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

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

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

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



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

3 (1) May include the entire local government.

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

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

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

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

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

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

21 b. A statement that the local government intends to  
22 make assessments to repay financing for qualified projects  
23 available to real property owners.

24 c. A description of the types of qualified projects  
25 eligible for the program.

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

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

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

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

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

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

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

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

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

22           (1) A program application fee paid by the real  
23 property owner requesting to participate in a program.

24           (2) A component of the interest rate on the  
25 assessment in the written contract between the local  
26 government and the real property owner.

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

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

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

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

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

19 (e) A local government may enter into a contract  
20 only with the record owner of the affected real property in a  
21 designated region. A contract entered into pursuant to this  
22 section or a summary memorandum of the contract must be  
23 recorded in the public records of the court of probate in the  
24 county in which the real property is located by the sponsoring  
25 unit of local government within five days after the execution  
26 of the contract. The recorded agreement must provide

1 constructive notice that the assessment to be levied on the  
2 real property constitutes a lien as described in Section 7.  
3 The recorded agreement also must provide a legal description  
4 of the real property covered by the lien, the amount secured  
5 by the lien, the maturity date for payment of all amounts  
6 secured by the lien, the names and addresses of the current  
7 owners of the real property subject to the assessment, the  
8 person or entity owed the assessment, the person or entity  
9 filing the notice, and a reference to the statutory assessment  
10 lien provided under this act.

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

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

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

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

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

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

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

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

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

17           (2) Notwithstanding subdivision (1), an assessment  
18 for a qualifying improvement that is supported by an energy,  
19 wind or flood mitigation audit is not subject to the limits in  
20 this subsection if the audit demonstrates that the annual  
21 energy or insurance savings from the qualified improvement  
22 equals or exceeds the annual repayment amount of the non-ad  
23 valorem assessment. For residential structures, the energy  
24 audit shall be conducted by a professional with one or more of  
25 the following qualifications or certifications: Residential  
26 Energy Services Network Home Energy Rating Systems (HERS),

1 Building Performance Institute Building Analyst (BPI), AEE  
2 Residential Energy Auditor (REA), or Professional Engineer  
3 with specific experience in energy efficiency. For commercial  
4 and industrial facilities, the energy audit shall be conducted  
5 by a professional with one or more of the following  
6 qualifications or certifications: AEE Certified Energy  
7 Manager (CEM), AEE Certified Energy Auditor (CEA), or  
8 Professional Engineer with specific experience in energy  
9 efficiency.

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

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

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

11           QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY AND  
12 RESILIENCY TO STORM-RELATED EVENTS. This real property being  
13 purchased is located within the jurisdiction of a local  
14 government that has placed an assessment on the real property  
15 pursuant to Section 3. The assessment is for a qualifying  
16 improvement to the real property relating to energy efficiency  
17 and community resilience to storm-related events, such as high  
18 winds and flooding and is not based on the value of the real  
19 property. You are encouraged to contact the county property  
20 appraiser's office to learn more about this and other  
21 assessments that may be provided by law.

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

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

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

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

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

16           (c) Delinquent installments of the assessments incur  
17 interest and penalties in the same manner as delinquent ad  
18 valorem taxes.

19           (d) A local government may recover costs and  
20 expenses, including attorney's fees, in a suit to collect a  
21 delinquent installment of an assessment.

22           (e) Provided, however, that in any action to enforce  
23 an assessment lien, the person or entity enforcing the  
24 assessment lien must serve the holders of all mortgages and  
25 other liens with notice about the enforcement action at least  
26 60 days before any hearing or other action is taken with



1 respect to the enforcement action. Service upon a domestic or  
2 foreign corporation or other entity shall be by serving the  
3 registered agent of the entity if a registered agent has been  
4 appointed; otherwise service shall be in accordance with Rule  
5 4 of the Alabama Rules of Civil Procedure.

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

12 Section 9. The Governor may appoint an existing  
13 state agency to exercise regulatory jurisdiction over programs  
14 and activities under this act. The state agency shall have  
15 the authority to adopt reasonable rules, interpretations, and  
16 guidances, consistent with the laws of this state, as may be  
17 necessary to carry out this act over which the agency has  
18 jurisdiction, including the development and administration of  
19 programs created under this act. The state agency shall  
20 provide initial rules or guidance within 12 months after the  
21 effective date of this act, or later if additional time is  
22 needed by the agency, and, in any event, before any local  
23 government can establish a program. The state agency also is  
24 authorized to develop a statewide program for local government  
25 participation at any time. In developing any program guidance,  
26 the state agency shall seek input from industry stakeholders

1 such as banks, real estate, insurance, contractors, and other  
2 relevant interests.

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

10 Section 11. Nothing in this act, nor any program  
11 adopted in accordance with the procedures established  
12 hereunder, shall alter, amend, or affect the rights, duties,  
13 and obligations of any electric supplier or the regulation or  
14 governance of any such entity.

15 Section 12. This act shall become effective on the  
16 first day of the third month following its passage and  
17 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on County and Municipal Government ..... 12-MAR-15

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 14-MAY-15

Read for the third time and passed as amended .... 19-MAY-15

Yeas 32  
Nays 0

Patrick Harris  
Secretary