

By: Strama, Miklos, Villarreal, Peña

H.B. No. 1391

Substitute the following for H.B. No. 1391:

By: Gonzalez Toureilles

C.S.H.B. No. 1391

A BILL TO BE ENTITLED

AN ACT

relating to the promotion and use of renewable energy systems and energy efficiency improvements; authorizing the issuance of revenue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 391 to read as follows:

CHAPTER 391. EMISSIONS MANAGEMENT PROJECT FINANCING THROUGH CONTRACTUAL ASSESSMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "District" means an emissions management district created under this chapter.

(2) "Emissions management project" means:

(A) a renewable energy system; or

(B) an energy efficiency improvement.

(3) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in a residential or commercial building, including:

(A) insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(B) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass

1 area, and other window and door system modifications that reduce
2 energy consumption;

3 (C) automatic energy control systems;

4 (D) heating, ventilating, or air conditioning
5 and distribution system modifications or replacements in a building
6 or central plant;

7 (E) caulking and weather-stripping;

8 (F) replacement or modification of lighting
9 fixtures to increase the energy efficiency of the system;

10 (G) energy recovery systems; and

11 (H) systems to increase the use of natural
12 daylight for interior lighting.

13 (4) "Local government" means a municipality or a
14 county.

15 (5) "Renewable energy system" means a fixture,
16 product, device, or interacting group of fixtures, products, or
17 devices that produces or uses energy from renewable resources and
18 is capable of being installed for use in a commercial or residential
19 building, including a system designed to generate electricity for
20 use in the building and to be installed on the customer's side of
21 the electric utility meter. The term includes:

22 (A) a photovoltaic generating system;

23 (B) a solar thermal system;

24 (C) a small wind generation system;

25 (D) a biomass energy system; and

26 (E) a geothermal energy system.

27 [Sections 391.002-391.050 reserved for expansion]

1 SUBCHAPTER B. CREATION AND OPERATION OF DISTRICT

2 Sec. 391.051. ORDINANCE OR ORDER CREATING DISTRICT. (a)

3 The governing body of a local government by ordinance or order may
4 establish one or more districts under this chapter.

5 (b) The ordinance or order creating the district must
6 designate:

7 (1) the district's territory as a defined area inside
8 the local government's boundaries in which property owners are
9 eligible to participate in contractual assessment agreements with
10 the local government, which area may include all or any portion of
11 the area inside the local government's boundaries;

12 (2) the kinds of emissions management projects
13 eligible for financing by the local government; and

14 (3) the date and time of a hearing on the creation of
15 the district.

16 (c) The ordinance or order creating the district must
17 include a finding that the financing of emissions management
18 projects under this chapter serves a public purpose of the local
19 government by reducing emissions and energy consumption.

20 Sec. 391.052. DISCRETE DISTRICT BOUNDARIES. (a) The
21 territory of a district created under this chapter may not overlap
22 the territory of another district created under this chapter.

23 (b) The boundaries of a district created by a municipality
24 may only include territory within the corporate boundaries of the
25 municipality or the municipality's extraterritorial jurisdiction.
26 The boundaries of a district created by a county may not include
27 territory within the corporate boundaries of a municipality or the

1 extraterritorial jurisdiction of a municipality.

2 Sec. 391.053. DISTRICT MANAGEMENT. (a) The governing body
3 of a local government may, under the governing body's supervision,
4 appoint a manager, administrator, or board to oversee and manage
5 emissions management project financing in the district.

6 (b) A meeting of an administrative body that oversees and
7 manages emissions management project financing in the district is
8 subject to Chapter 551, Government Code.

9 [Sections 391.054-391.100 reserved for expansion]

10 SUBCHAPTER C. FINANCING OF PROJECTS IN EMISSIONS MANAGEMENT

11 DISTRICTS

12 Sec. 391.101. GENERAL POWERS AND DUTIES. A local
13 government may:

14 (1) enter into contractual assessment agreements
15 under Section 391.102 to finance the purchase and installation of
16 emissions management projects for commercial and residential
17 buildings in the boundaries of the district;

18 (2) make other innovative arrangements to finance the
19 purchase and installation of emissions management projects for
20 commercial and residential buildings in the boundaries of a
21 district;

22 (3) lease equipment and materials for emissions
23 management projects to property owners in the boundaries of a
24 district; and

25 (4) issue revenue bonds to finance activities under
26 this chapter.

27 Sec. 391.102. CONTRACTUAL ASSESSMENT AGREEMENTS. (a) A

1 local government may enter into a contractual assessment agreement
2 with an owner of property to finance the purchase and installation
3 of an emissions management project for the owner's property.

4 (b) The governing body of the local government by official
5 action shall establish the terms of an agreement under this
6 chapter, including:

7 (1) the term of the assessments; and

8 (2) the rate of interest on the assessments.

9 (c) A contract under this section may allow the property
10 owner to directly:

11 (1) purchase the equipment and materials for the
12 installation of a renewable energy system or an energy efficiency
13 improvement; and

14 (2) contract for the installation of a renewable
15 energy system or energy efficiency improvement.

16 Sec. 391.103. LEVY OF ASSESSMENT. (a) After the local
17 government and a property owner enter into a contractual assessment
18 agreement, the governing body of the local government shall levy
19 the assessments against the property. The amount of the assessment
20 must be in the amount necessary to pay for:

21 (1) the amount of the contract for the improvement;

22 (2) the interest on the amount of the contract, at the
23 rate adopted in the ordinance or order creating the district; and

24 (3) apportioned administrative costs associated with
25 operating the district.

26 (b) A property owner may pay the assessment in full or in
27 installments as authorized by the local government in the ordinance

1 or order creating the district.

2 (c) The governing body of the local government shall make
3 reasonable efforts to collect assessment payments under this
4 chapter in the same manner as the local government collects
5 property taxes.

6 (d) The governing body of the local government shall have an
7 assessment roll prepared showing the assessments against each
8 property. The assessment roll shall be:

9 (1) filed with the secretary of the governing body or
10 other officer who performs the function of secretary;

11 (2) made available to the county tax
12 assessor-collector; and

13 (3) open for public inspection.

14 Sec. 391.104. INTEREST ON ASSESSMENTS; LIEN. (a)
15 Assessments bear interest at a rate specified by the governing body
16 of the local government, which may not exceed a rate that is
17 one-half of one percent higher than the actual interest rate paid on
18 the public debt used to finance the improvement.

19 (b) Interest on an assessment between the effective date of
20 the contract and the date the first installment and any related
21 penalty is payable shall be added to the first installment. The
22 interest or penalties on all unpaid installments shall be added to
23 each subsequent installment until paid.

24 (c) An assessment, including any interest and penalties on
25 that assessment, is a lien against the property until paid and may
26 be enforced by the governing body in the same manner that an ad
27 valorem tax lien against real property may be enforced by the

1 governing body. Delinquent installments of the assessment shall
2 incur liability for interest, penalties, and attorney's fees in the
3 same manner as delinquent ad valorem taxes.

4 (d) The owner of any property assessed may at any time pay
5 the entire assessment against any lot or parcel with interest
6 accrued to the date of the payment.

7 Sec. 391.105. SUPPLEMENTAL ASSESSMENTS. After notice and
8 hearing, the governing body of the local government may make
9 supplemental assessments to correct an omission or mistake in an
10 assessment:

11 (1) relating to the total cost of emissions management
12 projects financed by the district; or

13 (2) covering delinquencies or costs of collection for
14 the projects.

15 Sec. 391.106. EMISSIONS MANAGEMENT PROJECT VENDORS AND
16 INSTALLERS. (a) The state energy conservation office shall
17 establish guidelines to assist local governments in compiling lists
18 of contractors eligible to sell or install emissions management
19 projects and project components financed under this chapter.

20 (b) The competitive bidding requirements of Chapters 252
21 and 262, Local Government Code, do not apply to the purchase and
22 installation of emissions management projects financed under this
23 chapter.

24 (c) An ordinance or order creating a district may provide
25 for consolidated payment for multiple projects by a single vendor.

26 Sec. 391.107. LOCAL GOVERNMENT LIABILITY FOR EMISSIONS
27 MANAGEMENT PROJECTS. (a) For an emissions management project

1 purchased and installed through the use of financing under this
2 chapter, a local government:

3 (1) is not liable for any damages arising from the
4 purchase, installation, or use of any equipment relating to the
5 project;

6 (2) is not responsible for the maintenance of any
7 equipment relating to the project;

8 (3) is not responsible for the purchase of insurance
9 relating to the purchase, installation, or use of any equipment
10 relating to the project; and

11 (4) has no duty to respond to a complaint that may
12 arise relating to the purchase, installation, or use of any
13 equipment relating to the project.

14 (b) A local government does not guarantee or otherwise
15 secure loans for the purchase and installation of emissions
16 management projects financed under this chapter.

17 Sec. 391.108. REQUIREMENTS FOR PARTICIPATION BY PROPERTY
18 OWNER. (a) The governing body of the local government in the
19 ordinance or order establishing the district shall establish
20 requirements for property owner participation in the financing of
21 emissions management projects under this chapter, which must
22 include a requirement that the property owner:

23 (1) is not delinquent in the payment of property taxes
24 or mortgage payments for the property; and

25 (2) has not been delinquent or late in the payment of
26 property taxes or mortgage payments for the property.

27 (b) The local government may prioritize applications for

1 participation in financing under this chapter based on the relative
2 strength of the applicants' financial standing.

3 Sec. 391.109. ESTIMATE OF SAVINGS PROVIDED BY VENDOR.
4 Before making a sale of components for an emissions management
5 project, a vendor shall provide to the purchasing property owner an
6 estimate of the savings associated with the emissions management
7 project.

8 Sec. 391.110. DISTRICT FINANCING PROVISIONS. (a) A local
9 government that creates a district may:

10 (1) establish a special improvement fund for the
11 district in the manner authorized for public improvement districts
12 under Section 372.021, Local Government Code, except that the local
13 government may not levy a tax to support the fund;

14 (2) issue revenue bonds in the manner authorized for
15 public improvement districts under Sections 372.024 and 372.025,
16 Local Government Code, payable solely from assessment payments made
17 under contractual assessment agreements under this chapter;

18 (3) pledge assessment payment revenue from
19 contractual assessment agreements in the manner authorized for
20 public improvement districts under Section 372.026, Local
21 Government Code; and

22 (4) issue refunding bonds in the manner authorized for
23 public improvement districts under Section 372.027, Local
24 Government Code.

25 (b) A local government that creates a district shall:

26 (1) to the extent applicable, pay costs associated
27 with financing emissions management projects in the manner provided

1 for the payment of costs for improvements of a public improvement
2 district under Section 372.023, Local Government Code, except that
3 any bonds shall be payable solely from assessment payments made
4 under contractual assessment agreements under this chapter; and

5 (2) have revenue bonds authorized and registered in
6 the manner provided for revenue bonds issued for a public
7 improvement district under Section 372.028, Local Government Code.

8 (c) The holder of a bond issued under this chapter is not
9 entitled to demand payment of the bond with any money raised by
10 taxation.

11 SECTION 2. Section 372.003(b), Local Government Code, is
12 amended to read as follows:

13 (b) A public improvement project may include:

14 (1) landscaping;

15 (2) erection of fountains, distinctive lighting, and
16 signs;

17 (3) acquiring, constructing, improving, widening,
18 narrowing, closing, or rerouting of sidewalks or of streets, any
19 other roadways, or their rights-of-way;

20 (4) construction or improvement of pedestrian malls;

21 (5) acquisition and installation of pieces of art;

22 (6) acquisition, construction, or improvement of
23 libraries;

24 (7) acquisition, construction, or improvement of
25 off-street parking facilities;

26 (8) acquisition, construction, improvement, or
27 rerouting of mass transportation facilities;

1 (9) acquisition, construction, or improvement of
2 water, wastewater, or drainage facilities or improvements;

3 (10) the establishment or improvement of parks;

4 (11) projects similar to those listed in Subdivisions
5 (1)-(10);

6 (12) acquisition, by purchase or otherwise, of real
7 property in connection with an authorized improvement;

8 (13) special supplemental services for improvement
9 and promotion of the district, including services relating to
10 advertising, promotion, health and sanitation, water and
11 wastewater, renewable energy, public safety, security, business
12 recruitment, development, recreation, and cultural enhancement;
13 [~~and~~]

14 (14) payment of expenses incurred in the
15 establishment, administration, and operation of the district; and

16 (15) acquisition, installation, or improvement of
17 public renewable energy improvements.

18 SECTION 3. Section 375.112(a), Local Government Code, is
19 amended to read as follows:

20 (a) An improvement project or services provided by the
21 district may include the construction, acquisition, improvement,
22 relocation, operation, maintenance, or provision of:

23 (1) landscaping; lighting, banners, and signs;
24 streets and sidewalks; pedestrian skywalks, crosswalks, and
25 tunnels; seawalls; marinas; drainage and navigation improvements;
26 pedestrian malls; solid waste, water, sewer, and power facilities,
27 including electrical, gas, steam, cogeneration, and chilled water

1 facilities; renewable energy; parks, plazas, lakes, rivers,
2 bayous, ponds, and recreation and scenic areas; historic areas;
3 fountains; works of art; off-street parking facilities, bus
4 terminals, heliports, and mass transit systems; and the cost of any
5 demolition in connection with providing any of the improvement
6 projects;

7 (2) other improvements similar to those described in
8 Subdivision (1);

9 (3) the acquisition of real property or any interest
10 in real property in connection with an improvement, project, or
11 services authorized by this chapter, Chapter 54, Water Code, or
12 Chapter 365 or 441, Transportation Code;

13 (4) special supplemental services for advertising,
14 economic development, promoting the area in the district, health
15 and sanitation, public safety, maintenance, security, business
16 recruitment, development, elimination or relief of traffic
17 congestion, recreation, and cultural enhancement; and

18 (5) expenses incurred in the establishment,
19 administration, maintenance, and operation of the district or any
20 of its improvements, projects, or services.

21 SECTION 4. This Act takes effect September 1, 2009.