

BILL ANALYSIS

C.S.S.B. 385
By: Carona
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Legislature recently passed legislation authorizing contractual assessments for energy efficiency improvements to residential, commercial, industrial, or other real property, through a program referred to as PACE. Such law authorizes the governing body of a municipality to determine that it is convenient, advantageous, and in the public interest to designate an area of the municipality within which authorized municipal officials and property owners may enter into contracts to assess properties to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property.

However, interested parties contend that current law does not include certain necessary language to enable the use of municipal funds for energy improvements, which has prevented municipalities from providing the requisite financing to use the PACE program. The interested parties further contend that current law is not set up to help municipalities and counties secure private financing or establish a financing mechanism for water and energy improvements. C.S.S.B. 385 seeks to address these issues by establishing the Property Assessed Clean Energy Act relating to authorizing assessments for water and energy improvements in regions designated by municipalities and counties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 385 amends the Local Government Code to authorize an assessment to be imposed to repay the financing of a "qualified project," defined to mean the installation or modification of a permanent improvement fixed to real property and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The bill authorizes the assessment to be imposed on privately owned commercial or industrial real property or residential real property with five or more dwelling units located in a region designated under the bill. The bill prohibits an assessment from being imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property. The bill authorizes a local government to impose an assessment under the bill only under a written contract with the record owner of the real property to be assessed.

C.S.S.B. 385 authorizes the governing body of a municipality or county to determine that it is convenient and advantageous to establish a program under the bill, and it authorizes an authorized official of a local government that establishes a program to enter into a written contract with the record owner of real property in a designated region to impose an assessment to repay the owner's financing of a qualified project on the owner's property. The bill authorizes

the financing to be repaid through assessments to be provided by a third party or, if authorized by the program, by the local government. The bill establishes requirements for the written contract with the record owner of real property, depending on whether the program provides for third-party financing or local government financing. The bill authorizes the financing to include certain fees and costs and any other fees or costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

C.S.S.B. 385 authorizes the governing body of a local government to determine that it is convenient and advantageous to designate an area of the local government as a region within which authorized local government officials and record owners of real property may enter into written contracts to impose assessments to repay the financing by owners of qualified projects on the owners' property and, if authorized by the local government program, finance the qualified project. The bill authorizes an area designated as a region to include the entire local government and requires such an area to be located wholly within the local government's jurisdiction. The bill authorizes a municipality's extraterritorial jurisdiction to be included in an area of the local government designated as a region. The bill authorizes a local government to designate more than one region and authorizes regions to be separate, overlapping, or coterminous if multiple regions are designated.

C.S.S.B. 385 sets out actions that a local government must take to establish a program under the bill, including adopting a resolution of intent, holding a public hearing, and adopting a resolution establishing the program and the terms of the program. The bill provides for the terms of the program to include each item in the report required by the bill regarding the assessment imposed on real property and to include a description of each aspect of the program that may be amended only after another public hearing is held. The bill authorizes the resolution to incorporate the report or the amended version of the report by reference, and it authorizes the governing body of a local government to amend a program by resolution. The bill authorizes a local government that establishes a program in accordance with these requirements to exercise powers granted under the bill, which, for a municipality, are in addition to the authority provided by statutory provisions relating to contractual assessments for energy efficiency programs.

C.S.S.B. 385 authorizes a local government that establishes a program to hire and set the compensation of a program administrator and program staff, or contract for necessary professional services, and to impose fees to offset the costs of administering the program. The bill authorizes the fees to be assessed as a program application fee paid by the property owner requesting to participate in the program, as a component of the interest rate on the assessment in the written contract between the local government and the property owner, or both.

C.S.S.B. 385 sets out the required elements of the report regarding the assessment imposed on real property under the program. The bill requires the local government to make the report available for public inspection on the local government's Internet website and at the office of the official designated to enter into written contracts on behalf of the local government under the program. The bill, before a local government may enter into a written contract with a record owner of real property to impose an assessment to repay the financing of a qualified project, requires the holder of any mortgage lien on the property to be given, within a certain time frame, written notice of the owner's intention to participate in a program and requires a written consent from the holder of the mortgage lien on the property to be obtained.

C.S.S.B. 385 requires a program established under the bill to require for each proposed qualified project a review of water or energy baseline conditions and the projected water or energy savings to establish the projected water or energy savings. The bill requires a local government, after a qualified project is completed, to obtain verification that the qualified project was properly completed and is operating as intended. The bill requires a baseline water or energy review or verification review to be conducted by an independent third party.

C.S.S.B. 385 authorizes the proposed arrangements for financing a qualified project to authorize the property owner to purchase directly the related equipment and materials for the installation or modification of a qualified improvement and to contract directly for the installation or modification of a qualified improvement.

C.S.S.B. 385 requires a local government that authorizes financing through contractual assessments to file written notice of each contractual assessment in the real property records of the county in which the property is located and sets out the required content of the notice. The bill establishes that a contractual assessment and any interest or penalties on the assessment is a first and prior lien against the real property on which the assessment is imposed from the date on which the local government records the notice of contractual assessment and until the assessment, interest, or penalty is paid, and has the same priority status as a lien for any other property tax. The bill establishes that the lien runs with the land and that the portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien. The bill authorizes the assessment lien to be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government to the extent the enforcement is consistent with provisions of the Texas Constitution relating to a homestead, protection from forced sale, and mortgages, trust deeds, and liens. The bill establishes that delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes and authorizes a local government to recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

C.S.S.B. 385 authorizes the governing body of a local government to contract with the governing body of another taxing unit, or another entity, including a county assessor-collector, to perform the duties of the local government relating to collection of assessments imposed by the local government under the bill.

C.S.S.B. 385 authorizes a local government to issue bonds or notes to finance qualified projects through contractual assessments and prohibits the bonds or notes from being general obligations of the local government. The bill requires the bonds or notes to be secured by one or more of certain prescribed methods as provided by the governing body of the local government in the resolution or ordinance approving the bonds or notes. The bill makes a local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government a first lien on the assessments, funds, or contractual rights pledged in favor of the person to whom the pledge is given, without further action by the local government. The bill makes the lien valid and binding against any other person, with or without notice. The bill establishes that bonds or notes issued under the bill further certain essential public and governmental purposes.

C.S.S.B. 385 authorizes any combination of local governments to agree to jointly implement or administer a program under the bill's provisions and establishes that, if two or more local governments implement a program jointly, a single public hearing held jointly by the cooperating local governments is sufficient to satisfy the public hearing requirement. The bill authorizes one or more local governments to contract with a third party, including another local government, to administer a program.

C.S.S.B. 385 prohibits a local government that establishes a region from making the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through contractual assessments under the bill, or from otherwise compelling a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through such an assessment.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 385 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 399 to read as follows:

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT DISTRICTS

Sec. 399.001. SHORT TITLE. This chapter may be cited as the Property Assessed Clean Energy Act.

Sec. 399.002. DEFINITIONS. In this chapter:

(1) "District" means a district designated under this chapter.

(2) "Local government" means a municipality or county.

(3) "Program" means a program established under this chapter.

(4) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease water or energy consumption.

(7) "Renewable energy system" means a permanently fixed product or device, or interacting group of permanently fixed products or devices, on the customer's side of the meter that uses a renewable energy technology to generate electricity, provide thermal energy, or regulate temperature.

(5) "Qualified project" means the installation or modification of a qualified improvement or the acquisition, installation, or improvement of a renewable energy system.

(6) "Real property" means privately owned commercial or industrial real property or residential real property with five or more dwelling units.

Sec. 399.003. EXERCISE OF POWERS.

Sec. 399.004. AUTHORIZED ASSESSMENTS.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 399 to read as follows:

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT REGIONS

Sec. 399.001. SHORT TITLE. This chapter may be cited as the Property Assessed Clean Energy Act.

Sec. 399.002. DEFINITIONS. In this chapter:

(6) "Region" means a region designated under this chapter.

(1) "Local government" means a municipality or county.

(2) "Program" means a program established under this chapter.

(3) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

(4) "Qualified project" means the installation or modification of a qualified improvement.

(5) "Real property" means privately owned commercial or industrial real property or residential real property with five or more dwelling units.

Sec. 399.003. EXERCISE OF POWERS.

Sec. 399.004. Same as engrossed version.

Sec. 399.005. WRITTEN CONTRACT FOR ASSESSMENT REQUIRED.

Sec. 399.006. ESTABLISHMENT OF PROGRAM.

Sec. 399.007. DESIGNATION OF DISTRICT.

Sec. 399.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM.

Sec. 399.009. REPORT REGARDING ASSESSMENT.

Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR PARTICIPATION.

Sec. 399.011. REVIEW REQUIRED.

Sec. 399.012. DIRECT ACQUISITION BY OWNER.

No equivalent provision.

Sec. 399.013. LIEN. (a) A contractual assessment under this chapter and any interest or penalties on the assessment:

(1) is a first and prior lien against the real property on which the assessment is imposed until the assessment, interest, or penalty is paid; and

(2) has the same priority status as a lien for any other ad valorem tax.

(b) The lien runs with the land, and that portion of the assessment under the assessment contract that has not yet become

Sec. 399.005. Same as engrossed version.

Sec. 399.006. Substantially the same as engrossed version.

Sec. 399.007. Substantially the same as engrossed version.

Sec. 399.008. Substantially the same as engrossed version.

Sec. 399.009. Substantially the same as engrossed version.

Sec. 399.010. Substantially the same as engrossed version.

Sec. 399.011. Same as engrossed version.

Sec. 399.012. Substantially the same as engrossed version.

Sec. 399.013. RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT REQUIRED. (a) A local government that authorizes financing through contractual assessments under this chapter shall file written notice of each contractual assessment in the real property records of the county in which the property is located. (b) The notice under Subsection (a) must contain:

(1) the amount of the assessment;
(2) the legal description of the property;
(3) the name of each property owner; and
(4) a reference to the statutory assessment lien provided under this chapter.

Sec. 399.014. LIEN. (a) A contractual assessment under this chapter and any interest or penalties on the assessment:

(1) is a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of contractual assessment is recorded as provided by Section 399.013 and until the assessment, interest, or penalty is paid; and

(2) has the same priority status as a lien for any other ad valorem tax.

(b) The lien runs with the land, and that portion of the assessment under the assessment contract that has not yet become

due is not eliminated by foreclosure of a property tax lien.

(c) The assessment lien may be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(d) Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes.

(e) A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

Sec. 399.014. COLLECTION OF ASSESSMENTS.

Sec. 399.015. BONDS OR NOTES. (a) A local government may issue bonds or notes to finance qualified projects through contractual assessments under this chapter.

(b) Bonds or notes issued under this section may not be general obligations of the local government. The bonds or notes must be secured by one or more of the following as provided by the governing body of the local government in the resolution or ordinance approving the bonds or notes:

(1) payments of contractual assessments on benefited property in one or more specified districts designated under this chapter;

(2) reserves established by the local government from grants, bonds, or net proceeds or other lawfully available funds;

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

(4) tax increment revenues that are lawfully available for purposes consistent with this chapter; and

(5) any other funds lawfully available for purposes consistent with this chapter.

(c) A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government under this chapter is a first lien on the assessments, funds, or contractual rights pledged in favor

due is not eliminated by foreclosure of a property tax lien.

(c) The assessment lien may be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(d) Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes.

(e) A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

Sec. 399.015. Same as engrossed version.

Sec. 399.016. BONDS OR NOTES. (a) A local government may issue bonds or notes to finance qualified projects through contractual assessments under this chapter.

(b) Bonds or notes issued under this section may not be general obligations of the local government. The bonds or notes must be secured by one or more of the following as provided by the governing body of the local government in the resolution or ordinance approving the bonds or notes:

(1) payments of contractual assessments on benefited property in one or more specified regions designated under this chapter;

(2) reserves established by the local government from grants, bonds, or net proceeds or other lawfully available funds;

(3) municipal bond insurance, lines of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, or any other available means of providing credit support or liquidity; and

(4) any other funds lawfully available for purposes consistent with this chapter.

(c) A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government under this chapter is a first lien on the assessments, funds, or contractual rights pledged in favor

of the person to whom the pledge is given, without further action by the local government. The lien is valid and binding against any other person, with or without notice.

(d) Bonds or notes issued under this chapter further an essential public and governmental purpose, including:

- (1) improvement of the reliability of the state electrical system;
- (2) conservation of state water resources consistent with the state water plan;
- (3) reduction of energy costs;
- (4) economic stimulation and development;
- (5) enhancement of property values;
- (6) enhancement of employment opportunities; and
- (7) reduction in greenhouse gas emissions.

Sec. 399.016. JOINT IMPLEMENTATION

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

of the person to whom the pledge is given, without further action by the local government. The lien is valid and binding against any other person, with or without notice.

(d) Bonds or notes issued under this chapter further an essential public and governmental purpose, including:

- (1) improvement of the reliability of the state electrical system;
- (2) conservation of state water resources consistent with the state water plan;
- (3) reduction of energy costs;
- (4) economic stimulation and development;
- (5) enhancement of property values;
- (6) enhancement of employment opportunities; and
- (7) reduction in greenhouse gas emissions.

Sec. 399.017. Same as engrossed version.

Sec. 399.018. PROHIBITED ACTS. A local government that establishes a region under this chapter may not:

- (1) make the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through contractual assessments under this chapter;
- or
- (2) otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through contractual assessments under this chapter.

SECTION 2. Same as engrossed version.