

By: Carona

S.B. No. 385

A BILL TO BE ENTITLED

AN ACT

relating to authorizing assessments for water and energy improvements in districts designated by municipalities and counties.

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

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.

(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

1 or industrial real property or residential real property with five  
2 or more dwelling units.

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

8 Sec. 399.003. EXERCISE OF POWERS. In addition to the  
9 authority provided by Chapter 376 for municipalities, the governing  
10 body of a local government that establishes a program in accordance  
11 with the requirements provided by Section 399.008 may exercise  
12 powers granted under this chapter.

13 Sec. 399.004. AUTHORIZED ASSESSMENTS. (a) An assessment  
14 under this chapter may be imposed to repay the financing of  
15 qualified projects on real property located in a district  
16 designated under this chapter.

17 (b) An assessment under this chapter may not be imposed to  
18 repay the financing of:

19 (1) facilities for undeveloped lots or lots undergoing  
20 development at the time of the assessment; or

21 (2) the purchase or installation of products or  
22 devices not permanently fixed to real property.

23 Sec. 399.005. WRITTEN CONTRACT FOR ASSESSMENT REQUIRED. A  
24 local government may impose an assessment under this chapter only  
25 under a written contract with the record owner of the real property  
26 to be assessed.

27 Sec. 399.006. ESTABLISHMENT OF PROGRAM. (a) The governing

1 body of a local government may determine that it is convenient and  
2 advantageous to establish a program under this chapter.

3 (b) An authorized official of the local government that  
4 establishes a program may enter into a written contract with a  
5 record owner of real property in a district designated under this  
6 chapter to impose an assessment to repay the owner's financing of a  
7 qualified project on the owner's property. The financing to be  
8 repaid through assessments may be provided by a third party or, if  
9 authorized by the program, by the local government.

10 (c) If the program provides for third-party financing, the  
11 authorized official of the local government that enters into a  
12 written contract with a property owner under Subsection (b) must  
13 also enter into a written contract with the party that provides  
14 financing for a qualified project under the program to service the  
15 debt through assessments.

16 (d) If the program provides for local government financing,  
17 the written contract described by Subsection (b) must be a contract  
18 to finance the qualified project through assessments.

19 (e) The financing for which assessments are imposed may  
20 include:

21 (1) the cost of materials and labor necessary for  
22 installation or modification of a qualified improvement or  
23 installation or improvement of a renewable energy system;

24 (2) permit fees;

25 (3) inspection fees;

26 (4) lender's fees;

27 (5) program application and administrative fees;

1           (6) project development and engineering fees;

2           (7) third-party review fees, including verification  
3 review fees, under Section 399.011; and

4           (8) any other fees or costs that may be incurred by the  
5 property owner incident to the installation, modification, or  
6 improvement on a specific or pro rata basis, as determined by the  
7 local government.

8           Sec. 399.007. DESIGNATION OF DISTRICT. (a) The governing  
9 body of a local government may determine that it is convenient and  
10 advantageous to designate an area of the local government as a  
11 district within which authorized local government officials and  
12 record owners of real property may enter into written contracts to  
13 impose assessments to repay the financing by owners of qualified  
14 projects on the owners' property and, if authorized by the local  
15 government program, finance the qualified project.

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

18                   (1) may include the entire local government; and

19                   (2) must be located wholly within the local  
20 government's jurisdiction.

21           (c) For purposes of determining a municipality's  
22 jurisdiction under Subsection (b)(2), the municipality's  
23 extraterritorial jurisdiction may be included.

24           (d) A local government may designate more than one district.  
25 If multiple districts are designated, the districts may be  
26 separate, overlapping, or coterminous.

27           Sec. 399.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM.

1 (a) To establish a program under this chapter, the governing body  
2 of a local government must take the following actions in the  
3 following order:

4 (1) adopt a resolution of intent that includes:

5 (A) a finding that, if appropriate, financing  
6 qualified projects through contractual assessments is a valid  
7 public purpose;

8 (B) a statement that the local government intends  
9 to make contractual assessments to repay financing for qualified  
10 projects available to property owners;

11 (C) a description of the types of qualified  
12 projects that may be subject to contractual assessments;

13 (D) a description of the boundaries of the  
14 district;

15 (E) a description of any proposed arrangements  
16 for third-party financing to be available or any local government  
17 financing to be provided for qualified projects;

18 (F) a description of local government debt  
19 servicing procedures if third-party financing will be provided and  
20 assessments will be collected to service a third-party debt;

21 (G) a reference to the report on the proposed  
22 program prepared as provided by Section 399.009 and a statement  
23 identifying the location where the report is available for public  
24 inspection;

25 (H) a statement of the time and place for a public  
26 hearing on the proposed program; and

27 (I) a statement identifying the appropriate

1 local official and the appropriate assessor-collector for purposes  
2 of consulting regarding collecting the proposed contractual  
3 assessments with property taxes imposed on the assessed property;

4 (2) hold a public hearing at which the public may  
5 comment on the proposed program, including the report required by  
6 Section 399.009; and

7 (3) adopt a resolution establishing the program and  
8 the terms of the program, including:

9 (A) each item included in the report under  
10 Section 399.009; and

11 (B) a description of each aspect of the program  
12 that may be amended only after another public hearing is held.

13 (b) For purposes of Subsection (a)(3)(A), the resolution  
14 may incorporate the report or the amended version of the report, as  
15 appropriate, by reference.

16 (c) Subject to the terms of the resolution establishing the  
17 program as referenced by Subsection (a)(3)(B), the governing body  
18 of a local government may amend a program by resolution.

19 (d) A local government may:

20 (1) hire and set the compensation of a program  
21 administrator and program staff; or

22 (2) contract for professional services necessary to  
23 administer a program.

24 (e) A local government may impose fees to offset the costs  
25 of administering a program. The fees authorized by this subsection  
26 may be assessed as:

27 (1) a program application fee paid by the property

- 1 owner requesting to participate in the program;  
2 (2) a component of the interest rate on the assessment  
3 in the written contract between the local government and the  
4 property owner; or  
5 (3) a combination of Subdivisions (1) and (2).  
6 Sec. 399.009. REPORT REGARDING ASSESSMENT. (a) The report  
7 for a proposed program required by Section 399.008 must include:  
8 (1) a map showing the boundaries of the proposed  
9 district;  
10 (2) a form contract between the local government and  
11 the property owner specifying the terms of:  
12 (A) assessment under the program; and  
13 (B) financing provided by a third party or the  
14 local government, as appropriate;  
15 (3) if the proposed program provides for third-party  
16 financing, a form contract between the local government and the  
17 third party regarding the servicing of the debt through  
18 assessments;  
19 (4) a description of types of qualified projects that  
20 may be subject to contractual assessments;  
21 (5) a statement identifying a local government  
22 official authorized to enter into written contracts on behalf of  
23 the local government;  
24 (6) a plan for ensuring sufficient capital for  
25 third-party financing and, if appropriate, raising capital for  
26 local government financing for qualified projects;  
27 (7) if bonds will be issued to provide capital to

1 finance qualified projects as part of the program as provided by  
2 Section 399.015:

3 (A) a maximum aggregate annual dollar amount for  
4 financing through contractual assessments to be provided by the  
5 local government under the program;

6 (B) a method for ranking requests from property  
7 owners for financing through contractual assessments in priority  
8 order if requests appear likely to exceed the authorization amount;  
9 and

10 (C) a method for determining:

11 (i) the interest rate and period during  
12 which contracting owners would pay an assessment; and

13 (ii) the maximum amount of an assessment;

14 (8) a method for ensuring that the period of the  
15 contractual assessment does not exceed the useful life of the  
16 qualified project that is the basis for the assessment;

17 (9) a description of the application process and  
18 eligibility requirements for financing qualified projects to be  
19 repaid through contractual assessments under the program;

20 (10) a method as prescribed by Subsection (b) for  
21 ensuring that property owners requesting to participate in the  
22 program demonstrate the financial ability to fulfill financial  
23 obligations to be repaid through contractual assessments;

24 (11) a statement explaining the manner in which  
25 property will be assessed and assessments will be collected;

26 (12) a statement explaining the lender notice  
27 requirement provided by Section 399.010;



1           (13) a statement explaining the review requirement  
2 provided by Section 399.011;

3           (14) a description of marketing and participant  
4 education services to be provided for the program;

5           (15) a description of quality assurance and antifraud  
6 measures to be instituted for the program; and

7           (16) the procedures for collecting the proposed  
8 contractual assessments.

9           (b) The method for ensuring a demonstration of financial  
10 ability under Subsection (a)(10) must be based on appropriate  
11 underwriting factors, including:

12                 (1) providing for verification that:

13                         (A) the property owner requesting to participate  
14 under the program:

15                                 (i) is the legal owner of the benefited  
16 property;

17                                 (ii) is current on mortgage and property  
18 tax payments; and

19                                 (iii) is not insolvent or in bankruptcy  
20 proceedings; and

21                         (B) the title of the benefited property is not in  
22 dispute; and

23                 (2) requiring an appropriate ratio of the amount of  
24 the assessment to the assessed value of the property.

25           (c) The local government shall make the report available for  
26 public inspection:

27                 (1) on the local government's Internet website; and

1           (2) at the office of the official designated to enter  
2 into written contracts on behalf of the local government under the  
3 program.

4           Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR  
5 PARTICIPATION. Before a local government may enter into a written  
6 contract with a record owner of real property to impose an  
7 assessment to repay the financing of a qualified project under this  
8 chapter:

9           (1) the holder of any mortgage lien on the property  
10 must be given written notice of the owner's intention to  
11 participate in a program under this chapter on or before the 30th  
12 day before the date the written contract for assessment between the  
13 owner and the local government is executed; and

14           (2) a written consent from the holder of the mortgage  
15 lien on the property must be obtained.

16           Sec. 399.011. REVIEW REQUIRED. (a) A program established  
17 under this chapter must require for each proposed qualified project  
18 a review of water or energy baseline conditions and the projected  
19 water or energy savings to establish the projected water or energy  
20 savings.

21           (b) After a qualified project is completed, the local  
22 government shall obtain verification that the qualified project was  
23 properly completed and is operating as intended.

24           (c) A baseline water or energy review or verification review  
25 under this section must be conducted by an independent third party.

26           Sec. 399.012. DIRECT ACQUISITION BY OWNER. The proposed  
27 arrangements for financing a qualified project may authorize the

1 property owner to:

2 (1) purchase directly the related equipment and  
3 materials for the installation or modification of a qualified  
4 improvement or the installation or modification of a renewable  
5 energy system; and

6 (2) contract directly, including through lease, power  
7 purchase agreement, or other service contract, for the installation  
8 or modification of a qualified improvement or the installation or  
9 modification of a renewable energy system.

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

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

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

17 (b) The lien runs with the land, and that portion of the  
18 assessment under the assessment contract that has not yet become  
19 due is not eliminated by foreclosure of a property tax lien.

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

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

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

5       Sec. 399.014. COLLECTION OF ASSESSMENTS. The governing  
6 body of a local government may contract with the governing body of  
7 another taxing unit, as defined by Section 1.04, Tax Code, or  
8 another entity, including a county assessor-collector, to perform  
9 the duties of the local government relating to collection of  
10 assessments imposed by the local government under this chapter.

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

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

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

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

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

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

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

5           (c) A local government pledge of assessments, funds, or  
6 contractual rights in connection with the issuance of bonds or  
7 notes by the local government under this chapter is a first lien on  
8 the assessments, funds, or contractual rights pledged in favor of  
9 the person to whom the pledge is given, without further action by  
10 the local government. The lien is valid and binding against any  
11 other person, with or without notice.

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

14           (1) improvement of the reliability of the state  
15 electrical system;

16           (2) conservation of state water resources consistent  
17 with the state water plan;

18           (3) reduction of energy costs;

19           (4) economic stimulation and development;

20           (5) enhancement of property values;

21           (6) enhancement of employment opportunities; and

22           (7) reduction in greenhouse gas emissions.

23           Sec. 399.016. JOINT IMPLEMENTATION. (a) Any combination  
24 of local governments may agree to jointly implement or administer a  
25 program under this chapter.

26           (b) If two or more local governments implement a program  
27 jointly, a single public hearing held jointly by the cooperating

1 local governments is sufficient to satisfy the requirement of  
2 Section 399.008(a)(2).

3 (c) One or more local governments may contract with a third  
4 party, including another local government, to administer a program.

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