

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. Chapter 376, Local Government Code, is transferred to Subtitle C, Title 12, Local Government Code, redesignated as Chapter 399, Local Government Code, and amended to read as follows:

CHAPTER 399 [376]. MUNICIPAL AND COUNTY WATER AND [CONTRACTUAL ASSESSMENTS FOR] ENERGY IMPROVEMENT DISTRICTS [EFFICIENCY IMPROVEMENTS]

Sec. 399.001 [376.001]. 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 real  
property.

(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.

(8) "Renewable energy technology" means any  
technology that exclusively relies on an energy source that is  
naturally regenerated over a short time and derived directly from  
the sun, indirectly from the sun, or from moving water or other  
natural movements and mechanisms of the environment. A renewable  
energy technology includes a technology that relies on energy  
derived directly from the sun, on wind, geothermal, hydroelectric,  
wave, or tidal energy, or on biomass or biomass-based waste  
products, including landfill gas. A renewable energy technology  
does not rely on energy resources derived from fossil fuels, waste  
products from fossil fuels, or waste products from inorganic  
sources.

Sec. 399.003. EXERCISE OF POWERS. The governing body of a  
local government that establishes a program in accordance with the  
requirements provided by Section 399.008 may exercise powers  
granted under this chapter.

Sec. 399.004. AUTHORIZED ASSESSMENTS [~~FINANCING~~]. (a) An  
assessment under this chapter may be imposed to repay the financing

of qualified projects on real property located in a district  
designated under this chapter ~~[finance:~~

~~[(1) energy efficiency public improvements to developed~~  
~~lots for which the costs and time delays of creating an entity under~~  
~~law to assess the lot would be prohibitively large relative to the~~  
~~cost of the energy efficiency public improvement to be financed,~~  
~~and~~

~~[(2) the installation of distributed generation~~  
~~renewable energy sources or energy efficiency improvements that are~~  
~~permanently fixed to residential, commercial, industrial, or other~~  
~~real property].~~

(b) ~~[Sec. 376.002. CERTAIN FINANCING PROHIBITED.]~~ An  
assessment under this chapter may not be imposed to repay the  
financing of ~~[used to finance]:~~

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

(2) the purchase or installation of products or  
devices ~~[appliances]~~ not permanently fixed to real property.

Sec. 399.005 ~~[376.003].~~ WRITTEN CONTRACT ~~[CONSENT]~~ FOR  
ASSESSMENT REQUIRED. A local government ~~[municipality]~~ may impose  
an assessment under this chapter only under a written contract with  
the record ~~[consent of the]~~ owner of the real property to be  
assessed ~~[property at the time of the assessment].~~

Sec. 399.006. ESTABLISHMENT OF PROGRAM. (a) The governing  
body of a local government may determine that it is convenient and  
advantageous to establish a program under this chapter.

(b) An authorized official of the local government that

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

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

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

16 (e) An assessment imposed under this chapter may include the  
17 cost of program application and administrative fees. The financing  
18 for which assessments are imposed may include:

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

22 (2) permit fees;

23 (3) inspection fees;

24 (4) lender's fees;

25 (5) water or energy review and verification review  
26 fees; and

27 (6) 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.

Sec. 399.007 [~~376.004~~]. DESIGNATION OF DISTRICT [~~AREA FOR ASSESSMENT~~]. (a) [~~The governing body of a municipality may determine that it is convenient and advantageous to designate an area of the municipality within which authorized municipal officials and property owners may enter into contracts to assess properties for energy efficiency public improvements described by Section 376.001(1) and make financing arrangements under this chapter.~~

[~~(b)~~] The governing body of a local government [~~municipality~~] may determine that it is convenient and[~~7~~] advantageous[~~, and in the public interest~~] to designate an area of the local government as a district [~~municipality~~] within which authorized local government [~~municipal~~] officials and record [~~property~~] 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 [~~assess properties to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property~~].

(b) [~~(c)~~] An area designated as a district by the governing body of a local government [~~municipality~~] under this section:

(1) may include the entire local government; and

(2) must be located wholly within the local

1 government's jurisdiction ~~[municipality]~~.

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

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

8 Sec. 399.008 ~~[376.005]~~. PROCEDURE FOR ESTABLISHMENT OF  
9 PROGRAM ~~[RESOLUTION OF INTENTION TO CONTRACT FOR ASSESSMENT]~~. (a)  
10 To establish a program ~~[make a determination]~~ under this chapter  
11 ~~[Section 376.004]~~, the governing body of a local government  
12 ~~[municipality]~~ must take the following actions in the following  
13 order:

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

15 (A) a finding that, if appropriate, financing  
16 qualified projects through contractual assessments is a valid  
17 public purpose;

18 (B) ~~[indicating the governing body's intention~~  
19 ~~to designate an area for assessment.~~

20 ~~[(b) The resolution of intent must:~~

21 ~~[(1) include]~~ a statement that the local government  
22 intends ~~[municipality proposes]~~ to make contractual assessments to  
23 repay ~~[assessment]~~ financing for qualified projects available to  
24 property owners;

25 (C) a description of ~~[(2) identify]~~ the types of  
26 qualified projects ~~[energy efficiency public improvements,~~  
27 ~~distributed generation renewable energy resources, or energy~~

1 ~~efficiency improvements]~~ that may be subject to contractual  
2 assessments ~~[financed]~~;

3 (D) a description of ~~[(3) describe]~~ the  
4 boundaries of the district ~~[area in which contracts for assessments~~  
5 ~~may be entered into]~~;

6 (E) a description of any ~~[(4) thoroughly~~  
7 ~~describe the]~~ proposed arrangements for third-party financing to be  
8 available or any local government financing to be provided for  
9 qualified projects ~~[the program]~~;

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

13 (G) a reference to the report on the proposed  
14 program prepared as provided by Section 399.009 and a statement  
15 identifying the location where the report is available for public  
16 inspection; ~~[and]~~

17 (H) a statement of ~~[(5) state]~~ the time and  
18 place for a public hearing on ~~[and that interested persons may~~  
19 ~~object to or inquire about]~~ the proposed program ~~[at the hearing.~~

20 ~~[(c) If contractual assessments are to be used to finance~~  
21 ~~the installation of distributed generation renewable energy~~  
22 ~~sources or energy efficiency improvements that are permanently~~  
23 ~~fixed to real property, the resolution of intention must state that~~  
24 ~~it is in the public interest to do so.~~

25 ~~[(d) The resolution shall direct an appropriate municipal~~  
26 ~~official to:~~

27 ~~[(1) prepare a report under Section 376.006]; and~~

1                   (I) a statement identifying the appropriate  
2 local official and [~~(2) consult with~~] the appropriate  
3 assessor-collector for purposes of consulting [~~appraisal district~~  
4 ~~or districts~~] regarding collecting the proposed contractual  
5 assessments with property taxes imposed on the assessed property;

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

9                   (3) adopt a resolution establishing the program and  
10 the terms of the program, including:

11                   (A) each item included in the report under  
12 Section 399.009; and

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

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

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

21                   (d) A local government may:

22                   (1) hire and set the compensation of a program  
23 administrator; or

24                   (2) contract for professional services necessary to  
25 administer a program.

26                   (e) A local government may impose fees to offset the costs  
27 of administering a program. The fees authorized by this subsection



1 may be assessed as:

2 (1) a program application fee paid by the property  
3 owner requesting to participate in the program;

4 (2) a component of the interest rate on the assessment  
5 in the written contract between the local government and the  
6 property owner; or

7 (3) a combination of Subdivisions (1) and (2).

8 Sec. 399.009 [~~376.006~~]. REPORT REGARDING ASSESSMENT. (a)  
9 ~~The [An appropriate municipal official designated in the resolution~~  
10 ~~shall prepare a]~~ report for a proposed program required by Section  
11 399.008 must include [~~containing~~]:

12 (1) a map showing the boundaries of the proposed  
13 district [~~area within which contractual assessments are proposed to~~  
14 ~~be offered~~];

15 (2) a form [~~draft~~] contract between the local  
16 government and the property owner specifying the terms of:

17 (A) assessment under the program; and

18 (B) financing provided by a third party or the  
19 local government, as appropriate [~~that would be agreed to by the~~  
20 ~~municipality and a property owner within the contractual assessment~~  
21 ~~area~~];

22 (3) if the proposed program provides for third-party  
23 financing, a form contract between the local government and the  
24 third party regarding the servicing of the debt through  
25 assessments;

26 (4) a description [~~a statement of municipal policies~~  
27 ~~concerning contractual assessments including:~~

1                   [~~(A)~~ identification] of types of qualified  
 2 projects [~~energy efficiency public improvements, distributed~~  
 3 ~~generation renewable energy sources, or energy efficiency~~  
 4 ~~improvements~~] that may be subject to [~~financed through the use of~~  
 5 contractual assessments;

6                   (5) a statement identifying [~~(B)~~ ~~identification of~~]  
 7 a local government [~~municipal~~] official authorized to enter into  
 8 written contracts [~~contractual assessments~~] on behalf of the local  
 9 government [~~municipality~~];

10                  (6) a plan for ensuring sufficient capital for  
 11 third-party financing and, if appropriate, raising capital for  
 12 local government financing for qualified projects;

13                  (7) if bonds will be issued to provide capital to  
 14 finance qualified projects as part of the program as provided by  
 15 Section 399.015:

16                   (A) [~~(C)~~] a maximum aggregate annual dollar  
 17 amount for financing through contractual assessments to be provided  
 18 by the local government under the program [~~of contractual~~  
 19 ~~assessments~~];

20                   (B) [~~(D)~~] a method for ranking requests from  
 21 property owners for financing through contractual assessments in  
 22 priority order if requests appear likely to exceed the  
 23 authorization amount; and

24                   (C) a method for determining:

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

27                               (ii) the maximum amount of an assessment;

1           (8) a method for ensuring that the period of the  
2 contractual assessment does not exceed the useful life of the  
3 qualified project that is the basis for the assessment;

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

7           (10) [~~(E)~~] a method as prescribed by Subsection (b)  
8 for ensuring that property owners requesting to participate in the  
9 program [~~financing~~] demonstrate the financial ability to fulfill  
10 financial obligations to be repaid through [~~under the~~] contractual  
11 assessments;

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

14           (12) a statement explaining the lender notice  
15 requirement provided by Section 399.010;

16           (13) a statement explaining the water and energy  
17 review requirement provided by Section 399.011;

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

20           (15) a description of quality assurance and antifraud  
21 measures to be instituted for the program

22           ~~[(4) a plan for raising a capital amount required to pay~~  
23 ~~for work performed in accordance with contractual assessments that:~~

24                   ~~[(A) may include:~~

25                           ~~[(i) amounts to be advanced by the~~  
26 ~~municipality through funds available to it from any source; and~~

27                           ~~[(ii) the sale of bonds or other financing;~~

~~[(B) shall include a statement of or method for determining the interest rate and period during which contracting property owners would pay any assessment; and~~

~~[(C) shall provide for:~~

~~[(i) any reserve fund or funds; and~~

~~[(ii) the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and the municipality]; and~~

(16) ~~[(5)]~~ the results of the consultations with the appropriate assessor-collector ~~[appraisal districts]~~ concerning incorporating the proposed contractual assessments into the assessments of property taxes.

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

(1) providing for verification that:

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

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

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

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

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

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

3           (c) The local government shall make the report available for  
4 public inspection:

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

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

9           Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR  
10 PARTICIPATION. (a) In this section, "commercial or industrial  
11 property" means privately owned real property other than a  
12 residential dwelling with fewer than five dwelling units.

13           (b) Before a local government may enter into a written  
14 contract with a record owner of real property to impose an  
15 assessment to repay the financing of a qualified project under this  
16 chapter:

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

22                 (2) if the property is commercial or industrial  
23 property, a written consent from the holder of the mortgage lien on  
24 the property must be obtained.

25           Sec. 399.011. REVIEW REQUIRED. (a) A program established  
26 under this chapter must require a baseline water or energy review to  
27 be conducted for each proposed qualified project to establish

future water or energy savings.

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

(c) A baseline water or energy review or verification review under this section for commercial or industrial property, as defined by Section 399.110, must be conducted by an independent third party.

Sec. 399.012 [~~376.007~~]. DIRECT ACQUISITION [~~PURCHASE~~] BY OWNER. The [~~On the written consent of an authorized municipal official, the~~] proposed arrangements for financing a qualified project [~~the program pertaining to the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property~~] may authorize the property owner to:

(1) purchase directly the related equipment and materials for the installation or modification of a qualified improvement or the installation or modification of a renewable energy system [~~the distributed generation renewable energy sources or energy efficiency improvements~~]; and

(2) contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a qualified improvement or the installation or modification of a renewable energy system [~~the distributed generation renewable energy sources or energy efficiency improvements~~].

Sec. 399.013 [~~376.008~~]. LIEN. (a) A contractual [~~An~~]

1 assessment ~~[imposed]~~ under this chapter and any interest or  
2 penalties on the assessment:

3       (1) is ~~[constitutes]~~ a first and prior lien against  
4 the real property ~~[lot]~~ on which the assessment is imposed until the  
5 assessment, interest, or penalty is paid; and

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

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

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

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

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

23       Sec. 399.014. COLLECTION OF ASSESSMENTS. The governing  
24 body of a local government may contract with the governing body of  
25 another taxing unit, as defined by Section 1.04, Tax Code, or  
26 another entity, including a county assessor-collector, to perform  
27 the duties of the local government relating to collection of

1 assessments imposed by the local government under this chapter.

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

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

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

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

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

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

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

23 (c) A local government pledge of assessments, funds, or  
24 contractual rights in connection with the issuance of bonds or  
25 notes by the local government under this chapter is a first lien on  
26 the assessments, funds, or contractual rights pledged in favor of  
27 the person to whom the pledge is given, without further action by



1 the local government. The lien is valid and binding against any  
2 other person, with or without notice.

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

5 (1) improvement of the reliability of the state  
6 electrical system;

7 (2) conservation of state water resources consistent  
8 with the state water plan;

9 (3) reduction of energy costs;

10 (4) economic stimulation and development;

11 (5) enhancement of property values;

12 (6) enhancement of employment opportunities; and

13 (7) reduction in greenhouse gas emissions.

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

17 (b) If two or more local governments implement a program  
18 jointly, a single public hearing held jointly by the cooperating  
19 local governments is sufficient to satisfy the requirement of  
20 Section 399.008(a)(2).

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

23 SECTION 2. The changes in law made by this Act apply only to  
24 a program established under Chapter 399, Local Government Code, as  
25 transferred, redesignated, and amended by this Act, on or after the  
26 effective date of this Act. A program established under Chapter  
27 376, Local Government Code, before the effective date of this Act,

1 is governed by the law in effect on the date the program was  
2 established, and the former law is continued in effect for that  
3 purpose.

4       SECTION 3. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2013.