

By: Keffer

H.B. No. 3363

A BILL TO BE ENTITLED

1 AN ACT
2 relating to authorizing local government programs to provide
3 assessments for residential water and energy improvements in
4 designated regions, including authorizing the issuance of
5 obligations to provide financing for the programs; authorizing a
6 fee.

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

8 SECTION 1. Section [1232.002](#), Government Code, is amended to
9 read as follows:

10 Sec. 1232.002. PURPOSE. The purpose of this chapter is to
11 provide a method of financing for:

12 (1) the acquisition or construction of buildings;
13 [~~and~~]

14 (2) the purchase or lease of equipment by executive or
15 judicial branch state agencies; and

16 (3) local government water and energy improvement
17 contractual assessment programs for the benefit of residential real
18 property under Chapter 400, Local Government Code.

19 SECTION 2. Section [1232.066](#)(a), Government Code, is amended
20 to read as follows:

21 (a) The board's authority under this chapter is limited to
22 the financing of:

23 (1) the acquisition or construction of a building;

24 (2) the purchase or lease of equipment; [~~or~~]

- 1 (3) stranded costs of a municipal power agency; or
2 (4) local government water and energy improvement
3 contractual assessment programs for the benefit of residential real
4 property under Chapter 400, Local Government Code.

5 SECTION 3. Subchapter C, Chapter 1232, Government Code, is
6 amended by adding Section 1232.1075 to read as follows:

7 Sec. 1232.1075. ISSUANCE OF OBLIGATIONS FOR FINANCING LOCAL
8 GOVERNMENT WATER AND ENERGY IMPROVEMENT CONTRACTUAL ASSESSMENT
9 PROGRAMS. (a) The legislature finds that:

10 (1) promoting the conservation, protection,
11 management, development, and beneficial use of the state's energy
12 and water resources is an essential public purpose and it is
13 appropriate for the state to assist local governments in the
14 development and financing of local government water and energy
15 improvement contractual assessment programs for the benefit of
16 residential real property under Chapter 400, Local Government Code;
17 and

18 (2) it is appropriate for the authority, on the
19 request of a local government, to assist in the financing of local
20 government water and energy improvement contractual assessment
21 programs for the benefit of residential real property under Chapter
22 400, Local Government Code.

23 (b) In this section "bond," "credit agreement," "local
24 government," and "program administrator" have the meanings
25 assigned by Section 400.002, Local Government Code.

26 (c) At the request of the program administrator under
27 Section 400.016, Local Government Code, the authority shall issue

1 bonds for the financing of a local government water and energy
2 improvement contractual assessment program for the benefit of
3 residential real property established under Chapter 400, Local
4 Government Code.

5 (d) The authority shall determine the method of sale, type
6 of bond, bond form, maximum interest rates, and other terms of the
7 bonds that, in the authority's judgment, best achieve the economic
8 goals of the local government and provide funds at the lowest
9 practicable cost.

10 (e) The authority may enter into a credit agreement in
11 connection with the bonds. The bonds and the related credit
12 agreement must be payable from and secured by a pledge of revenues
13 to be received from contractual assessments imposed under the
14 program established under Chapter 400, Local Government Code.

15 (f) The proceeds of bonds issued by the authority under this
16 section shall be deposited with a trustee selected by the authority
17 and the program administrator.

18 (g) Bond proceeds, including investment income, shall be
19 held in trust for the exclusive use and benefit of the local
20 government. The local government may use the proceeds to pay:

21 (1) the costs of materials and labor necessary for the
22 installation or modification of qualified improvements;

23 (2) underwriting, processing, and administrative
24 fees;

25 (3) the costs associated with issuing the bonds,
26 including fees paid to a bond issuer, bond counsel, bond placement
27 agent, or bond trustee;

1 (4) assessment, administrative, and county recording
2 fees; and

3 (5) any other lawfully permitted costs related to a
4 program established under Chapter 400, Local Government Code.

5 (h) A bond issued by the authority under this section and
6 any related credit agreement is not a debt of the state, a state
7 agency, or a local government and is not a pledge of the faith and
8 credit of the state, a state agency, or a local government. A bond
9 issued by the authority under this section and any related credit
10 agreement is payable solely from and secured by a pledge of revenues
11 from contractual assessments imposed under the program established
12 under Chapter 400, Local Government Code.

13 (i) A bond issued by the authority under this section and
14 any related credit agreement must contain on its face a statement to
15 the effect that:

16 (1) the state, a state agency, or a local government is
17 not obligated to pay the principal of or interest on the bond except
18 as provided by this section; and

19 (2) the faith and credit or the taxing power of the
20 state, a state agency, or a local government may not be pledged to
21 pay the principal of or interest on the bond.

22 (j) The state may not with respect to any outstanding bonds
23 under this section:

24 (1) take action to limit or restrict the rights of the
25 local government to fulfill its responsibility to pay bond
26 obligations; or

27 (2) in any way impair the rights or remedies of the

1 bond owners until the bonds are fully discharged.

2 (k) Bonds issued by the authority under this section, any
3 transaction relating to the bonds, and any profits made from the
4 sale of the bonds are exempt from taxation by the state or a local
5 government.

6 (1) The board of directors of the authority and the
7 employees of the authority are not personally liable as a result of
8 exercising any rights or responsibilities under this section.

9 SECTION 4. Subtitle C, Title 12, Local Government Code, is
10 amended by adding Chapter 400 to read as follows:

11 CHAPTER 400. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT

12 REGIONS FOR RESIDENTIAL IMPROVEMENTS

13 Sec. 400.001. SHORT TITLE. This chapter may be cited as the
14 Residential Property Assessed Clean Energy Act ("R-PACE").

15 Sec. 400.002. DEFINITIONS. In this chapter:

16 (1) "Bond" means any type of revenue obligation,
17 including a bond, note, certificate, or other instrument, payable
18 from and secured by a pledge of revenues received from contractual
19 assessments as provided in the resolution authorizing the
20 obligation. A bond obligation includes the principal of a bond and
21 any premium and interest on the bond, together with any amount owed
22 under a related credit agreement.

23 (2) "Credit agreement" means a loan agreement, a
24 revolving credit agreement, an agreement establishing a line of
25 credit, a letter of credit, an interest rate swap agreement, an
26 interest rate lock agreement, a currency swap agreement, a forward
27 payment conversion agreement, an agreement to provide payments

1 based on levels of or changes in interest rates or currency exchange
2 rates, an agreement to exchange cash flows or a series of payments,
3 an option, put, or call to hedge payment, currency, interest rate,
4 or other exposure, or another agreement that enhances the
5 marketability, security, or creditworthiness of a bond issued under
6 this chapter.

7 (3) "Local government" means a municipality or county.

8 (4) "Program" means a program established under this
9 chapter.

10 (5) "Program administrator" means the administrator
11 designated under Section 400.006(b) or the local government
12 official responsible for discharging the administrative duties of
13 the program.

14 (6) "Property owner" means the record owner of real
15 property.

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

23 (8) "Qualified project" means the installation or
24 modification of a qualified improvement.

25 (9) "Real property" means residential real property on
26 which a dwelling designed for occupancy for one to four families is
27 located.

1 (10) "Region" means a region designated under this
2 chapter.

3 Sec. 400.003. EXERCISE OF POWERS. In addition to the
4 authority provided by Chapter 376 for municipalities, the governing
5 body of a local government that establishes a program in accordance
6 with the requirements provided by Section 400.008 may exercise
7 powers granted under this chapter.

8 Sec. 400.004. AUTHORIZED ASSESSMENTS. (a) An assessment
9 under this chapter may be imposed to repay the financing of
10 qualified projects on real property located in a region designated
11 under this chapter.

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

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

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

18 Sec. 400.005. WRITTEN CONTRACT FOR ASSESSMENT REQUIRED. A
19 local government may impose an assessment under this chapter only
20 under a written contract with the property owner of real property to
21 be assessed.

22 Sec. 400.006. ESTABLISHMENT OF PROGRAM. (a) The governing
23 body of a local government may determine that it is convenient and
24 advantageous to establish a program under this chapter.

25 (b) A local government may enter into an agreement with a
26 designated administrator for the purposes of administering,
27 qualifying, and otherwise discharging the local government's

1 administrative responsibilities over the program in its
2 jurisdiction, except that the local government retains the
3 responsibility to impose assessments as provided by this chapter.
4 The designated administrator may be a for profit or nonprofit
5 organization with experience in managing programs similar to
6 programs established under this chapter or an organization whose
7 executive leadership includes persons who have managed programs
8 similar to those established under this chapter.

9 (c) A local government may contract with a designated
10 administrator that has established and is administering a program
11 for one or more other local governments.

12 (d) The program administrator may enter into a written
13 contract with a property owner in a region designated under this
14 chapter to impose an assessment to repay the property owner's
15 financing of a qualified project. The contract must expressly
16 state the terms of the assessment, including the assessment term,
17 the payment amounts, and the remedies for default and foreclosure.

18 (e) The financing to be repaid through assessments under a
19 program established under this chapter may be provided by:

20 (1) a third party;

21 (2) the local government, if authorized by the
22 program; or

23 (3) the Texas Public Finance Authority as authorized
24 by Section 1232.1075, Government Code.

25 (f) If the program provides for third-party financing, the
26 program administrator that enters into the written contract with a
27 property owner must also enter into a written contract with the

1 third party that provides financing for a qualified project under
2 the program to service the debt through assessments.

3 (g) If the program provides for bond financing, the written
4 contract described by Subsection (d) must be a contract to finance
5 the qualified project through assessments.

6 (h) The financing for which assessments are imposed may
7 include:

8 (1) the costs of materials and labor necessary for
9 installation or modification of a qualified improvement;

10 (2) permit fees;

11 (3) inspection fees;

12 (4) fees associated with issuing bonds, including bond
13 placement agent and bond trustee fees;

14 (5) underwriting, processing, and administrative
15 fees;

16 (6) origination fees;

17 (7) program application and administrative fees;

18 (8) project development and engineering fees;

19 (9) county recording fees; and

20 (10) any other fees or costs that may be incurred by
21 the property owner incident to the installation, modification, or
22 improvement on a specific or pro rata basis, as determined by the
23 local government.

24 Sec. 400.007. DESIGNATION OF REGION. (a) The governing
25 body of a local government may determine that it is convenient and
26 advantageous to designate an area of the local government as a
27 region within which the program administrator and property owners

1 may enter into written contracts to impose assessments to repay the
2 financing by owners of qualified projects and, if authorized by the
3 local government program, finance the qualified project.

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

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

7 (2) must be located wholly within the local
8 government's jurisdiction.

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

12 (d) A local government may designate more than one region.
13 If multiple regions are designated, the regions may be separate,
14 overlapping, or coterminous.

15 Sec. 400.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM.

16 (a) To establish a program under this chapter, the governing body
17 of a local government must take the following actions in the
18 following order:

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

20 (A) a finding that, if appropriate, financing
21 qualified projects through contractual assessments is a valid
22 public purpose;

23 (B) a statement that the local government intends
24 to make contractual assessments to repay financing for qualified
25 projects available to property owners;

26 (C) if appropriate, a statement that the local
27 government intends to delegate the administration of the program to

- 1 a designated administrator;
2 (D) a description of the types of qualified
3 projects that may be subject to contractual assessments;
4 (E) a description of the boundaries of the
5 region;
6 (F) a description of any proposed arrangements
7 for third-party financing to be available or any authorized state
8 or local government financing to be provided for qualified
9 projects;
10 (G) a description of proposed debt servicing
11 procedures if third-party financing will be provided and
12 assessments will be collected to service a third-party debt;
13 (H) a reference to the report on the proposed
14 program prepared as provided by Section 400.009 and a statement
15 identifying the location where the report is available for public
16 inspection;
17 (I) a statement of the time and place for a public
18 hearing on the proposed program; and
19 (J) a statement identifying the appropriate
20 local official and the appropriate assessor-collector for purposes
21 of consulting regarding collecting the proposed contractual
22 assessments with property taxes imposed on the assessed property;
23 (2) hold a public hearing at which the public may
24 comment on the proposed program, including the report required by
25 Section 400.009; and
26 (3) adopt a resolution establishing the program and
27 the terms of the program, including:

1 (A) each item included in the report under
2 Section 400.009;

3 (B) a description of each aspect of the program
4 that may be amended only after another public hearing is held; and

5 (C) the name and business address of the program
6 administrator.

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

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

13 (d) If a local government does not use a designated
14 administrator, a local government may:

15 (1) hire and set the compensation of an administrator
16 and staff for the program; or

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

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

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

24 (2) a component of the interest rate on the assessment
25 in the written contract between the local government and the
26 property owner; or

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

1 Sec. 400.009. REPORT REGARDING ASSESSMENT. (a) The report
2 for a proposed program required by Section 400.008 must include:

3 (1) a map showing the boundaries of the proposed
4 region;

5 (2) a form contract between the program administrator
6 and the property owner specifying the terms of:

7 (A) assessment under the program;

8 (B) fees associated with the administration of
9 the program; and

10 (C) financing and any costs associated with the
11 financing provided by, as appropriate:

12 (i) a third party;

13 (ii) the local government; or

14 (iii) the Texas Public Finance Authority as
15 authorized by Section 1232.1075, Government Code;

16 (3) if the proposed program provides for third-party
17 financing, a form contract between the program administrator and
18 the third party regarding the servicing of the debt through
19 assessments;

20 (4) a description of types of qualified projects that
21 may be subject to contractual assessments;

22 (5) a statement identifying the program administrator
23 authorized to enter into written contracts on behalf of the local
24 government;

25 (6) a plan for ensuring sufficient capital for
26 third-party financing and, if appropriate, raising capital for
27 local government financing for qualified projects;

1 (7) if bonds will be issued to provide capital to
2 finance qualified projects as part of the program as provided by
3 Section 400.015:

4 (A) the maximum principal amount for financing
5 through bonds;

6 (B) a method for determining:

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

9 (ii) the maximum amount of an assessment;
10 and

11 (C) a description of the use of the proceeds,
12 which may include the payment of:

13 (i) the costs for qualified improvements;

14 (ii) the costs of issuing the bonds;

15 (iii) the costs of a bond reserve fund; and

16 (iv) any other lawfully permitted program
17 costs;

18 (8) a method for ensuring that the period of the
19 contractual assessment does not exceed the useful life of the
20 qualified project that is the basis for the assessment;

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

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

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

3 (12) a statement explaining mortgage insurance
4 requirements provided by Section 400.010;

5 (13) a description of marketing and participant
6 education services to be provided for the program;

7 (14) a description of quality assurance and antifraud
8 measures to be instituted for the program; and

9 (15) the procedures for collecting the proposed
10 contractual assessments.

11 (b) The method for determining financial ability under
12 Subsection (a)(10) must use appropriate underwriting factors,
13 including:

14 (1) providing for verification that:

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

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

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

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

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

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

27 (c) The local government shall make the report available for

1 public inspection:

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

3 (2) at the office of the program administrator.

4 Sec. 400.010. MORTGAGE INSURANCE CERTIFICATION REQUIRED
5 FOR PARTICIPATION. Before a local government may enter into a
6 written contract with a property owner to impose an assessment to
7 repay the financing of a qualified project under this chapter, the
8 program administrator must certify that mortgage guaranty
9 insurance offered by an insurer that holds a certificate of
10 authority to write mortgage guaranty insurance in this state is in
11 place to protect the holder of the first lien mortgage on the
12 property to be assessed from and against losses that may be caused
13 by an assessment recorded under this chapter.

14 Sec. 400.011. DIRECT ACQUISITION BY OWNER. The proposed
15 arrangements for financing a qualified project may authorize the
16 property owner to:

17 (1) purchase directly the related equipment and
18 materials for the installation or modification of a qualified
19 improvement; and

20 (2) contract directly, including through a lease,
21 power purchase agreement, or other service contract, for the
22 installation or modification of a qualified improvement.

23 Sec. 400.012. RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT
24 REQUIRED. (a) A local government that authorizes financing
25 through contractual assessments under this chapter shall file
26 notice of each contractual assessment in the real property records
27 of the county in which the property is located.

1 (b) The notice under Subsection (a) must contain:

2 (1) the amount of the assessment;

3 (2) the legal description of the property;

4 (3) the name of each property owner; and

5 (4) a reference to the statutory assessment lien
6 provided under this chapter.

7 Sec. 400.013. LIEN. (a) A contractual assessment under
8 this chapter and any interest or penalties on the assessment:

9 (1) is a first and prior lien against the real property
10 on which the assessment is imposed from the date on which the notice
11 of contractual assessment is recorded as provided by Section
12 400.012 and until the assessment, interest, or penalty is paid; and

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

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

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

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

27 (e) A local government may recover costs and expenses,

1 including attorney's fees, in a suit to collect a delinquent
2 installment of an assessment in the same manner as in a suit to
3 collect a delinquent property tax.

4 Sec. 400.014. COLLECTION OF ASSESSMENTS. The governing
5 body of a local government may contract with the governing body of
6 another taxing unit, as defined by Section 1.04, Tax Code, or
7 another entity, including a county assessor-collector, to perform
8 the duties of the local government relating to collection of
9 assessments imposed by the local government under this chapter.

10 Sec. 400.015. BONDS ISSUED BY LOCAL GOVERNMENT. (a) A
11 local government may issue bonds to finance qualified projects
12 through contractual assessments under this chapter.

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

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

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

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

27 (4) any other funds lawfully available for purposes

1 consistent with this chapter.

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

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

11 (1) improvement of the reliability of the state
12 electrical system;

13 (2) conservation of state water resources consistent
14 with the state water plan;

15 (3) reduction of energy costs;

16 (4) economic stimulation and development;

17 (5) enhancement of property values;

18 (6) enhancement of employment opportunities; and

19 (7) reduction in greenhouse gas emissions.

20 Sec. 400.016. REQUEST TO TEXAS PUBLIC FINANCE AUTHORITY FOR
21 BOND ISSUANCE. (a) If a local government determines it is in the
22 best interest of the local government to seek assistance in
23 financing the program through the issuance of bonds, the local
24 government may request the Texas Public Finance Authority to issue
25 bonds under Section 1232.1075, Government Code, on its behalf.

26 (b) The governing body of the local government must pass a
27 resolution authorizing the program administrator to submit a

1 request to the Texas Public Finance Authority to issue bonds. The
2 request must state the principal amount of the bonds and the maximum
3 term, not to exceed 25 years.

4 (c) The principal amount requested under Subsection (b) may
5 be increased to include an amount sufficient to:

6 (1) pay the costs of issuance by the Texas Public
7 Finance Authority;

8 (2) provide for a bond reserve fund; and

9 (3) capitalize interest for the period determined
10 necessary by the local government, not to exceed two years.

11 Sec. 400.017. JOINT IMPLEMENTATION. (a) Any combination
12 of local governments may agree to jointly establish, implement, or
13 administer a program under this chapter.

14 (b) If two or more local governments implement a program
15 jointly, a single public hearing held jointly by the cooperating
16 local governments is sufficient to satisfy the requirement of
17 Section 400.008(a)(2).

18 (c) Local governments acting as a jointly operated program
19 are authorized to request the issuance of bonds under Section
20 400.016 and to exercise the same powers under Section 400.003,
21 including the authority to contract with a designated
22 administrator.

23 Sec. 400.018. PROHIBITED ACTS. A local government that
24 establishes a region under this chapter may not:

25 (1) make the issuance of a permit, license, or other
26 authorization from the local government to a person who owns
27 property in the region contingent on the person entering into a

1 written contract to repay the financing of a qualified project
2 through contractual assessments under this chapter; or

3 (2) otherwise compel a person who owns property in the
4 region to enter into a written contract to repay the financing of a
5 qualified project through contractual assessments under this
6 chapter.

7 Sec. 400.019. NO PERSONAL LIABILITY. The governing body of
8 a local government or local government employees are not personally
9 liable as a result of exercising any rights or responsibilities
10 granted under this chapter.

11 SECTION 5. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2015.