

By: Birdwell

S.B. No. 1281

A BILL TO BE ENTITLED

AN ACT

relating to assessments for water and energy improvements in certain municipalities and counties.

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

SECTION 1. The heading to Chapter 399, Local Government Code, is amended to read as follows:

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT  
PROPERTY ASSESSMENTS [~~REGIONS~~]

SECTION 2. Section 399.002, Local Government Code, is amended by adding Subdivisions (1-a) and (2-a) and amending Subdivision (2) to read as follows:

(1-a) "Office" means the state energy conservation office.

(2) "Program" means the [~~a~~] program established under this chapter.

(2-a) "Program administrator" means the third party selected by the office to administer the program.

SECTION 3. Chapter 399, Local Government Code, is amended by adding Sections 399.0023, 399.0025, 399.0027, and 399.0029 to read as follows:

Sec. 399.0023. RULES. The office shall adopt rules to administer the program.

Sec. 399.0025. PROGRAM ADMINISTRATOR. (a) The office shall administer the program through a third-party administrator

1 selected under this section.

2 (b) In selecting the program administrator, the office  
3 shall select the candidate that demonstrates:

4 (1) best practices in program design;

5 (2) compliance with applicable ethics requirements;

6 and

7 (3) appropriate underwriting and technical standards.

8 (c) The program administrator shall oversee program  
9 elements, including implementing:

10 (1) guidelines;

11 (2) documentation, underwriting, and technical  
12 standards; and

13 (3) administrative protocols as described by Section  
14 399.0027.

15 Sec. 399.0027. ADMINISTRATION. (a) The office shall  
16 review and either approve or request revision of administrative  
17 protocols developed under this section.

18 (b) The program administrator shall develop:

19 (1) a form contract between the local government and  
20 the property owner specifying the terms of:

21 (A) assessment under the program; and

22 (B) financing provided by a third party or the  
23 local government, as appropriate;

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

1           (3) a description of types of qualified projects that  
2 may be subject to contractual assessments;

3           (4) a method for ranking requests from property owners  
4 for financing through contractual assessments in priority order if  
5 requests appear likely to exceed the amount authorized for funding  
6 by a local government;

7           (5) a method for determining:

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

10                   (B) the maximum amount of an assessment;

11           (6) a method for ensuring that the period of the  
12 contractual assessment does not exceed the useful life of the  
13 qualified project that is the basis for the assessment;

14           (7) a description of the application process and  
15 eligibility requirements for financing qualified projects to be  
16 repaid through contractual assessments under the program;

17           (8) a method for ensuring that property owners  
18 requesting to participate in the program demonstrate the financial  
19 ability to fulfill financial obligations to be repaid through  
20 contractual assessments;

21           (9) the manner in which property will be assessed and  
22 assessments will be collected;

23           (10) the lender notice required by Section [399.010](#);

24           (11) the review required by Section [399.011](#);

25           (12) marketing and participant education services to  
26 be provided for the program;

27           (13) quality assurance and antifraud measures;

1           (14) procedures for collecting the proposed  
2 contractual assessments; and

3           (15) any other item necessary for the administration  
4 of the program or as directed by the office.

5           Sec. 399.0029. DEMONSTRATION OF FINANCIAL ABILITY. The  
6 method for ensuring a demonstration of financial ability under  
7 Section 399.0027(b)(8) must be based on appropriate underwriting  
8 factors, including:

9           (1) providing for verification that:

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

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

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

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

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

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

22           SECTION 4. Section 399.003, Local Government Code, is  
23 amended to read as follows:

24           Sec. 399.003. EXERCISE OF POWERS BY LOCAL GOVERNMENT.

25 (a) In addition to the authority provided by Chapter 376 for  
26 municipalities, the governing body of a local government that  
27 participates in the [~~establishes a~~] program [~~in accordance with the~~

1 ~~requirements provided by Section 399.008~~] may exercise powers  
2 granted under the program [~~this chapter~~].

3 (b) Participation in the program [~~The establishment and~~  
4 ~~operation of a program under this chapter~~] by a local government is  
5 a governmental function for all purposes.

6 SECTION 5. Section 399.004(a), Local Government Code, is  
7 amended to read as follows:

8 (a) An assessment under this chapter may be imposed to repay  
9 the financing of qualified projects on real property located in the  
10 territory of a local government participating in the program  
11 [~~region designated under this chapter~~]. Property located in a  
12 municipality's extraterritorial jurisdiction may be included in  
13 the municipality's territory for the purposes of participation in  
14 the program.

15 SECTION 6. Chapter 399, Local Government Code, is amended  
16 by adding Section 399.0045 to read as follows:

17 Sec. 399.0045. AUTHORIZED USER FEE. (a) The program  
18 administrator may collect a user fee imposed on each contract  
19 entered into under the program.

20 (b) Fees collected under this section may be used only to  
21 pay the costs of administering the program.

22 SECTION 7. The heading to Section 399.006, Local Government  
23 Code, is amended to read as follows:

24 Sec. 399.006. LOCAL GOVERNMENT PARTICIPATION IN  
25 [ESTABLISHMENT OF] PROGRAM.

26 SECTION 8. Sections 399.006(a), (b), and (e), Local  
27 Government Code, are amended to read as follows:

1 (a) The governing body of a local government may determine  
2 that it is convenient and advantageous to participate in  
3 ~~[establish]~~ a program under this chapter.

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

12 (e) The financing for which assessments are imposed may  
13 include:

14 (1) the cost of materials and labor necessary for  
15 installation or modification of a qualified improvement;

16 (2) permit fees;

17 (3) inspection fees;

18 (4) lender's fees;

19 (5) program application and administrative fees;

20 (6) project development and engineering fees;

21 (7) third-party review fees, including verification  
22 review fees, under Section 399.011; ~~and~~

23 (8) a user fee authorized under Section 399.0045; and

24 (9) any other fees or costs that may be incurred by the  
25 property owner incident to the installation, modification, or  
26 improvement on a specific or pro rata basis, as determined by the  
27 office ~~[local government]~~.

1 SECTION 9. The heading to Section 399.008, Local Government  
2 Code, is amended to read as follows:

3 Sec. 399.008. PROCEDURE FOR PARTICIPATION IN  
4 ~~[ESTABLISHMENT OF]~~ PROGRAM.

5 SECTION 10. Section 399.008, Local Government Code, is  
6 amended by amending Subsections (a), (b), and (d) and adding  
7 Subsection (f) to read as follows:

8 (a) Except as provided by Subsection (f), to participate in  
9 the ~~[To establish a]~~ program ~~[under this chapter]~~, the governing  
10 body of a local government must ~~[take the following actions in the~~  
11 ~~following order:~~

12 ~~[(1)]~~ adopt a resolution ~~[of intent]~~ that includes:

13 (1) ~~[(A)]~~ a finding that ~~[, if appropriate,]~~ financing  
14 qualified projects through contractual assessments is a valid  
15 public purpose;

16 (2) ~~[(B)]~~ a statement that the local government  
17 intends to make contractual assessments to repay financing for  
18 qualified projects available to property owners;

19 (3) ~~[(C)]~~ a description of the types of qualified  
20 projects that may be subject to contractual assessments;

21 (4) ~~[(D)] a description of the boundaries of the~~  
22 ~~region;~~

23 ~~[(E)]~~ a description of any proposed arrangements  
24 for third-party financing to be available or any local government  
25 financing to be provided for qualified projects;

26 (5) ~~[(F)]~~ a description of local government debt  
27 servicing procedures if third-party financing will be provided and

1 assessments will be collected to service a third-party debt;

2 (6) [~~(G)~~] a reference to the report on the proposed  
3 program prepared as provided by Section 399.009 and a statement  
4 identifying the location where the report is available for public  
5 inspection;

6 [~~(H) a statement of the time and place for a public  
7 hearing on the proposed program,~~] and

8 (7) [~~(I)~~] a statement identifying the appropriate  
9 representative of the local government and the appropriate  
10 assessor-collector for purposes of consulting regarding collecting  
11 the proposed contractual assessments imposed on the assessed  
12 property[+

13 [~~(2) hold a public hearing at which the public may  
14 comment on the proposed program, including the report required by  
15 Section 399.009, and~~

16 [~~(3) adopt a resolution establishing the program and  
17 the terms of the program, including:~~

18 [~~(A) each item included in the report under  
19 Section 399.009, and~~

20 [~~(B) a description of each aspect of the program  
21 that may be amended only after another public hearing is held].~~

22 (b) For purposes of Subsection (a)(1) [~~(a)(3)(A)~~], the  
23 resolution may incorporate the report required by Section 399.009  
24 [~~or the amended version of the report~~], as appropriate, by  
25 reference.

26 (d) A local government may:

27 (1) hire and set the compensation of staff necessary

1 to participate in the program [~~a program administrator and program~~  
2 ~~staff~~]; or

3 (2) contract for professional services necessary to  
4 participate in the [~~administer a~~] program.

5 (f) A local government that established a program under this  
6 chapter before September 1, 2019, may participate in the program by  
7 passing a resolution stating that the local government is  
8 participating. The resolution is not required to meet the  
9 requirements of Subsection (a) or to include the report described  
10 by Section 399.009.

11 SECTION 11. The heading to Section 399.009, Local  
12 Government Code, is amended to read as follows:

13 Sec. 399.009. REPORT REGARDING PROGRAM [~~ASSESSMENT~~].

14 SECTION 12. Sections 399.009(a) and (c), Local Government  
15 Code, are amended to read as follows:

16 (a) Before adopting a resolution under Section 399.008 to  
17 join the program, a local government must prepare a [~~The~~] report,  
18 consistent with guidelines adopted by the program administrator,  
19 that includes [~~for a proposed program required by Section 399.008~~  
20 ~~must include~~]:

21 (1) the items described by Section 399.0027(b) [~~a map~~  
22 ~~showing the boundaries of the proposed region~~];

23 (2) [~~a form contract between the local government and~~  
24 ~~the property owner specifying the terms of:~~

25 [~~(A) assessment under the program; and~~

26 [~~(B) financing provided by a third party or the~~  
27 ~~local government, as appropriate,~~

1           ~~[(3) if the proposed program provides for third-party~~  
2 ~~financing, a form contract between the local government and the~~  
3 ~~third party regarding the servicing of the debt through~~  
4 ~~assessments;~~

5           ~~[(4) a description of types of qualified projects that~~  
6 ~~may be subject to contractual assessments;~~

7           ~~[(5)]~~ a statement identifying a local government  
8 representative authorized to enter into written contracts on behalf  
9 of the local government;

10           (3) ~~[(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; and

13           (4) ~~[(7)]~~ if bonds will be issued to provide capital  
14 to finance qualified projects as part of the program as provided by  
15 Section 399.016, +

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

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

23           ~~[(C) a method for determining:~~

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

26                   ~~[(ii) the maximum amount of an assessment;~~

27           ~~[(8) a method for ensuring that the period of the~~

1 ~~contractual assessment does not exceed the useful life of the~~  
2 ~~qualified project that is the basis for the assessment;~~

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

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

10 ~~[(11) a statement explaining the manner in which~~  
11 ~~property will be assessed and assessments will be collected;~~

12 ~~[(12) a statement explaining the lender notice~~  
13 ~~requirement provided by Section 399.010;~~

14 ~~[(13) a statement explaining the review requirement~~  
15 ~~provided by Section 399.011;~~

16 ~~[(14) a description of marketing and participant~~  
17 ~~education services to be provided for the program;~~

18 ~~[(15) a description of quality assurance and antifraud~~  
19 ~~measures to be instituted for the program; and~~

20 ~~[(16) the procedures for collecting the proposed~~  
21 ~~contractual assessments].~~

22 (c) The local government shall make the report available for  
23 public inspection[+]

24 ~~[(1)] on the local government's Internet website[+ and~~

25 ~~[(2) at the office of the representative designated to~~  
26 ~~enter into written contracts on behalf of the local government~~  
27 ~~under the program].~~

1 SECTION 13. Section 399.010, Local Government Code, is  
2 amended to read as follows:

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

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

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

15 SECTION 14. Section 399.011(a), Local Government Code, is  
16 amended to read as follows:

17 (a) The [A] program [~~established under this chapter~~] must  
18 require for each proposed qualified project:

19 (1) a review of water or energy baseline conditions  
20 and the projected water or energy savings to establish the  
21 projected water or energy savings; and

22 (2) a verification that a proposed qualified  
23 improvement meets the requirements of a qualified project.

24 SECTION 15. Section 399.013(a), Local Government Code, is  
25 amended to read as follows:

26 (a) The program administrator shall file on behalf of a [A]  
27 local government that authorizes financing through contractual

1 assessments under this chapter [~~shall file~~] written notice of each  
2 contractual assessment in the real property records of the county  
3 in which the property is located.

4 SECTION 16. Section 399.016(b), Local Government Code, is  
5 amended to read as follows:

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

11 (1) payments of contractual assessments on benefited  
12 property [~~in one or more specified regions designated under this~~  
13 ~~chapter~~];

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

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

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

22 SECTION 17. Section 399.018, Local Government Code, is  
23 amended to read as follows:

24 Sec. 399.018. PROHIBITED ACTS. A local government that  
25 participates in the program [~~establishes a region under this~~  
26 ~~chapter~~] may not:

27 (1) make the issuance of a permit, license, or other

1 authorization from the local government to a person who owns  
2 property in the territory of the local government [~~region~~]  
3 contingent on the person entering into a written contract to repay  
4 the financing of a qualified project through contractual  
5 assessments under this chapter; or

6 (2) otherwise compel a person who owns property in the  
7 territory of the local government [~~region~~] to enter into a written  
8 contract to repay the financing of a qualified project through  
9 contractual assessments under this chapter.

10 SECTION 18. Section 399.019, Local Government Code, is  
11 amended to read as follows:

12 Sec. 399.019. NO PERSONAL LIABILITY. The members of the  
13 governing body of a local government, other elected officials of a  
14 local government, employees of a local government, [~~and~~] board  
15 members, executives, employees, and employees of the office or the  
16 program administrator [~~and contractors of a third party who enter~~  
17 ~~into a contract with a local government to provide administrative~~  
18 ~~services for a program under this chapter]~~ are not personally  
19 liable as a result of exercising any rights or responsibilities  
20 granted under this chapter.

21 SECTION 19. The following provisions of Chapter 399, Local  
22 Government Code, are repealed:

- 23 (1) Section 399.002(6);
- 24 (2) Section 399.007;
- 25 (3) Sections 399.008(c) and (e);
- 26 (4) Section 399.009(b); and
- 27 (5) Section 399.017.

1           SECTION 20. (a) A local government that has established a  
2 program for assessments for water and energy improvements under  
3 Chapter 399, Local Government Code, as it existed before the  
4 effective date of this Act, may continue the program only as  
5 necessary for the fulfillment of contractual obligations. A local  
6 government may not extend a contractual obligation in lieu of  
7 satisfying the requirements for participation in the program for  
8 assessments for water and energy improvements under Section  
9 399.006, Local Government Code, as amended by this Act.

10           (b) A contract entered into under Chapter 399, Local  
11 Government Code, as it existed before the effective date of this  
12 Act, continues in effect until the term specified in the contract is  
13 complete and is governed by the law in effect on the date the  
14 contract was executed, and the former law is continued for that  
15 purpose.

16           (c) The changes in law made by this Act do not invalidate or  
17 otherwise affect bonds issued under Chapter 399, Local Government  
18 Code, as it existed before the effective date of this Act, for the  
19 purpose of financing a contract made under that chapter.

20           SECTION 21. This Act takes effect September 1, 2019.