

By: Carona

S.B. No. 385

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT

9 DISTRICTS

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

12 Sec. 399.002. DEFINITIONS. In this chapter:

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

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

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

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

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

24 (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

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:

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.