

AN ACT

relating to authorizing assessments for water and energy improvements in regions designated by municipalities and counties; imposing a fee.

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

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

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT

REGIONS

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

Sec. 399.002. DEFINITIONS. In this chapter:

(1) "Local government" means a municipality or county.

(2) "Program" means a program established under this chapter.

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

(4) "Qualified project" means the installation or modification of a qualified improvement.

(5) "Real property" means privately owned commercial

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

3 (6) "Region" means a region designated under this  
4 chapter.

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

10 Sec. 399.004. AUTHORIZED ASSESSMENTS. (a) An assessment  
11 under this chapter may be imposed to repay the financing of  
12 qualified projects on real property located in a region designated  
13 under this chapter.

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

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

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

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

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

27 (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 region 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) The financing for which assessments are imposed may  
17 include:

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

20 (2) permit fees;

21 (3) inspection fees;

22 (4) lender's fees;

23 (5) program application and administrative fees;

24 (6) project development and engineering fees;

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

27 (8) any other fees or costs that may be incurred by the

1 property owner incident to the installation, modification, or  
2 improvement on a specific or pro rata basis, as determined by the  
3 local government.

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

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

- 14 (1) may include the entire local government; and  
15 (2) must be located wholly within the local  
16 government's jurisdiction.

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

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

23 Sec. 399.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM.

24 (a) To establish a program under this chapter, the governing body  
25 of a local government must take the following actions in the  
26 following order:

- 27 (1) adopt a resolution of intent that includes:

1                   (A) a finding that, if appropriate, financing  
2 qualified projects through contractual assessments is a valid  
3 public purpose;

4                   (B) a statement that the local government intends  
5 to make contractual assessments to repay financing for qualified  
6 projects available to property owners;

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

9                   (D) a description of the boundaries of the  
10 region;

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

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

17                   (G) a reference to the report on the proposed  
18 program prepared as provided by Section 399.009 and a statement  
19 identifying the location where the report is available for public  
20 inspection;

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

23                   (I) a statement identifying the appropriate  
24 local official and the appropriate assessor-collector for purposes  
25 of consulting regarding collecting the proposed contractual  
26 assessments with property taxes imposed on the assessed property;

27                   (2) hold a public hearing at which the public may

1 comment on the proposed program, including the report required by  
2 Section 399.009; and

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

5 (A) each item included in the report under  
6 Section 399.009; and

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

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

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

15 (d) A local government may:

16 (1) hire and set the compensation of a program  
17 administrator and program staff; or

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

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

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

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

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

2           Sec. 399.009. REPORT REGARDING ASSESSMENT. (a) The report  
3 for a proposed program required by Section 399.008 must include:

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

6           (2) a form contract between the local government and  
7 the property owner specifying the terms of:

8                   (A) assessment under the program; and

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

11           (3) if the proposed program provides for third-party  
12 financing, a form contract between the local government and the  
13 third party regarding the servicing of the debt through  
14 assessments;

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

17           (5) a statement identifying a local government  
18 official authorized to enter into written contracts on behalf of  
19 the local government;

20           (6) a plan for ensuring sufficient capital for  
21 third-party financing and, if appropriate, raising capital for  
22 local government financing for qualified projects;

23           (7) if bonds will be issued to provide capital to  
24 finance qualified projects as part of the program as provided by  
25 Section 399.016:

26                   (A) a maximum aggregate annual dollar amount for  
27 financing through contractual assessments to be provided by the

- 1 local government under the program;  
2                   (B) a method for ranking requests from property  
3 owners for financing through contractual assessments in priority  
4 order if requests appear likely to exceed the authorization amount;  
5 and  
6                   (C) 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                  (8) a method for ensuring that the period of the  
11 contractual assessment does not exceed the useful life of the  
12 qualified project that is the basis for the assessment;  
13                  (9) a description of the application process and  
14 eligibility requirements for financing qualified projects to be  
15 repaid through contractual assessments under the program;  
16                  (10) a method as prescribed by Subsection (b) for  
17 ensuring that property owners requesting to participate in the  
18 program demonstrate the financial ability to fulfill financial  
19 obligations to be repaid through contractual assessments;  
20                  (11) a statement explaining the manner in which  
21 property will be assessed and assessments will be collected;  
22                  (12) a statement explaining the lender notice  
23 requirement provided by Section 399.010;  
24                  (13) a statement explaining the review requirement  
25 provided by Section 399.011;  
26                  (14) a description of marketing and participant  
27 education services to be provided for the program;

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

3           (16) the procedures for collecting the proposed  
4 contractual assessments.

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

8                   (1) providing for verification that:

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

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

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

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

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

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

21           (c) The local government shall make the report available for  
22 public inspection:

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

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

27           Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR

1 PARTICIPATION. Before a local government may enter into a written  
2 contract with a record owner of real property to impose an  
3 assessment to repay the financing of a qualified project under this  
4 chapter:

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

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

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

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

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

22 Sec. 399.012. DIRECT ACQUISITION BY OWNER. The proposed  
23 arrangements for financing a qualified project may authorize the  
24 property owner to:

25 (1) purchase directly the related equipment and  
26 materials for the installation or modification of a qualified  
27 improvement; and

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

4           Sec. 399.013. RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT  
5 REQUIRED. (a) A local government that authorizes financing  
6 through contractual assessments under this chapter shall file  
7 written notice of each contractual assessment in the real property  
8 records of the county in which the property is located.

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

- 10           (1) the amount of the assessment;  
11           (2) the legal description of the property;  
12           (3) the name of each property owner; and  
13           (4) a reference to the statutory assessment lien  
14 provided under this chapter.

15           Sec. 399.014. LIEN. (a) A contractual assessment under  
16 this chapter and any interest or penalties on the assessment:

- 17           (1) is a first and prior lien against the real property  
18 on which the assessment is imposed from the date on which the notice  
19 of contractual assessment is recorded as provided by Section  
20 399.013 and until the assessment, interest, or penalty is paid; and  
21           (2) has the same priority status as a lien for any  
22 other ad valorem tax.

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

26           (c) The assessment lien may be enforced by the local  
27 government in the same manner that a property tax lien against real

1 property may be enforced by the local government to the extent the  
2 enforcement is consistent with Section 50, Article XVI, Texas  
3 Constitution.

4 (d) Delinquent installments of the assessments incur  
5 interest and penalties in the same manner as delinquent property  
6 taxes.

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

11 Sec. 399.015. COLLECTION OF ASSESSMENTS. The governing  
12 body of a local government may contract with the governing body of  
13 another taxing unit, as defined by Section 1.04, Tax Code, or  
14 another entity, including a county assessor-collector, to perform  
15 the duties of the local government relating to collection of  
16 assessments imposed by the local government under this chapter.

17 Sec. 399.016. BONDS OR NOTES. (a) A local government may  
18 issue bonds or notes to finance qualified projects through  
19 contractual assessments under this chapter.

20 (b) Bonds or notes issued under this section may not be  
21 general obligations of the local government. The bonds or notes  
22 must be secured by one or more of the following as provided by the  
23 governing body of the local government in the resolution or  
24 ordinance approving the bonds or notes:

25 (1) payments of contractual assessments on benefited  
26 property in one or more specified regions designated under this  
27 chapter;

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

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

7           (4) any other funds lawfully available for purposes  
8 consistent with this chapter.

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

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

18           (1) improvement of the reliability of the state  
19 electrical system;

20           (2) conservation of state water resources consistent  
21 with the state water plan;

22           (3) reduction of energy costs;

23           (4) economic stimulation and development;

24           (5) enhancement of property values;

25           (6) enhancement of employment opportunities; and

26           (7) reduction in greenhouse gas emissions.

27           Sec. 399.017. JOINT IMPLEMENTATION. (a) Any combination

1 of local governments may agree to jointly implement or administer a  
2 program under this chapter.

3 (b) If two or more local governments implement a program  
4 jointly, a single public hearing held jointly by the cooperating  
5 local governments is sufficient to satisfy the requirement of  
6 Section 399.008(a)(2).

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

9 Sec. 399.018. PROHIBITED ACTS. A local government that  
10 establishes a region under this chapter may not:

11 (1) make the issuance of a permit, license, or other  
12 authorization from the local government to a person who owns  
13 property in the region contingent on the person entering into a  
14 written contract to repay the financing of a qualified project  
15 through contractual assessments under this chapter; or

16 (2) otherwise compel a person who owns property in the  
17 region to enter into a written contract to repay the financing of a  
18 qualified project through contractual assessments under this  
19 chapter.

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 385 passed the Senate on March 27, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 15, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 385 passed the House, with amendment, on May 8, 2013, by the following vote: Yeas 134, Nays 13, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor