

1-1 By: Birdwell S.B. No. 1281
 1-2 (In the Senate - Filed February 28, 2019; March 7, 2019,
 1-3 read first time and referred to Committee on Natural Resources &
 1-4 Economic Development; April 8, 2019, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 8,
 1-6 Nays 1; April 8, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11		X		
1-12	X			
1-13			X	
1-14	X			
1-15			X	
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1281 By: Birdwell

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to assessments for water and energy improvements in
 1-24 certain municipalities and counties.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. The heading to Chapter 399, Local Government
 1-27 Code, is amended to read as follows:

1-28 CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT
 1-29 PROPERTY ASSESSMENTS [REGIONS]

1-30 SECTION 2. Section 399.002, Local Government Code, is
 1-31 amended by adding Subdivisions (1-a) and (2-a) and amending
 1-32 Subdivision (2) to read as follows:

1-33 (1-a) "Office" means the state energy conservation
 1-34 office.

1-35 (2) "Program" means the [a] program established under
 1-36 this chapter.

1-37 (2-a) "Program administrator" means the third party
 1-38 selected by the office to administer the program.

1-39 SECTION 3. Chapter 399, Local Government Code, is amended
 1-40 by adding Sections 399.0023, 399.0025, 399.0027, and 399.0029 to
 1-41 read as follows:

1-42 Sec. 399.0023. RULES. The office shall adopt rules to
 1-43 administer the program.

1-44 Sec. 399.0025. PROGRAM ADMINISTRATOR. (a) The office
 1-45 shall administer the program through a third-party administrator
 1-46 selected under this section.

1-47 (b) In selecting the program administrator, the office
 1-48 shall select the candidate that demonstrates:

1-49 (1) best practices in program design;

1-50 (2) compliance with applicable ethics requirements;
 1-51 and

1-52 (3) appropriate underwriting and technical standards.

1-53 (c) The program administrator shall oversee program
 1-54 elements, including implementing:

1-55 (1) guidelines;

1-56 (2) documentation, underwriting, and technical
 1-57 standards; and

1-58 (3) administrative protocols as described by Section
 1-59 399.0027.

1-60 Sec. 399.0027. ADMINISTRATION. (a) The office shall

2-1 review and either approve or request revision of administrative
2-2 protocols developed under this section.

2-3 (b) The program administrator shall develop:

2-4 (1) a form contract between the local government and
2-5 the property owner specifying the terms of:

2-6 (A) assessment under the program; and

2-7 (B) financing provided by a third party or the
2-8 local government, as appropriate;

2-9 (2) if the proposed program provides for third-party
2-10 financing, a form contract between the local government and the
2-11 third party regarding the servicing of the debt through
2-12 assessments;

2-13 (3) a description of types of qualified projects that
2-14 may be subject to contractual assessments;

2-15 (4) a method for ranking requests from property owners
2-16 for financing through contractual assessments in priority order if
2-17 requests appear likely to exceed the amount authorized for funding
2-18 by a local government;

2-19 (5) a method for determining:

2-20 (A) the interest rate and period during which
2-21 contracting owners would pay an assessment; and

2-22 (B) the maximum amount of an assessment;

2-23 (6) a method for ensuring that the period of the
2-24 contractual assessment does not exceed the useful life of the
2-25 qualified project that is the basis for the assessment;

2-26 (7) a description of the application process and
2-27 eligibility requirements for financing qualified projects to be
2-28 repaid through contractual assessments under the program;

2-29 (8) a method for ensuring that property owners
2-30 requesting to participate in the program demonstrate the financial
2-31 ability to fulfill financial obligations to be repaid through
2-32 contractual assessments;

2-33 (9) the manner in which property will be assessed and
2-34 assessments will be collected;

2-35 (10) the lender notice required by Section 399.010;

2-36 (11) the review required by Section 399.011;

2-37 (12) marketing and participant education services to
2-38 be provided for the program;

2-39 (13) quality assurance and antifraud measures;

2-40 (14) procedures for collecting the proposed
2-41 contractual assessments; and

2-42 (15) any other item necessary for the administration
2-43 of the program or as directed by the office.

2-44 Sec. 399.0029. DEMONSTRATION OF FINANCIAL ABILITY. The
2-45 method for ensuring a demonstration of financial ability under
2-46 Section 399.0027(b)(8) must be based on appropriate underwriting
2-47 factors, including:

2-48 (1) providing for verification that:

2-49 (A) the property owner requesting to participate
2-50 under the program:

2-51 (i) is the legal owner of the benefited
2-52 property;

2-53 (ii) is current on mortgage and property
2-54 tax payments; and

2-55 (iii) is not insolvent or in bankruptcy
2-56 proceedings; and

2-57 (B) the title of the benefited property is not in
2-58 dispute; and

2-59 (2) requiring an appropriate ratio of the amount of
2-60 the assessment to the assessed value of the property.

2-61 SECTION 4. Section 399.003, Local Government Code, is
2-62 amended to read as follows:

2-63 Sec. 399.003. EXERCISE OF POWERS BY LOCAL GOVERNMENT.

2-64 (a) In addition to the authority provided by Chapter 376 for
2-65 municipalities, the governing body of a local government that
2-66 participates in the [~~establishes a~~] program [~~in accordance with the~~
2-67 requirements provided by Section 399.008] may exercise powers
2-68 granted under the program [~~this chapter~~].

2-69 (b) Participation in the program [~~The establishment and~~

3-1 ~~operation of a program under this chapter]~~ by a local government is
3-2 a governmental function for all purposes.

3-3 SECTION 5. Section 399.004(a), Local Government Code, is
3-4 amended to read as follows:

3-5 (a) An assessment under this chapter may be imposed to repay
3-6 the financing of qualified projects on real property located in the
3-7 territory of a local government participating in the program
3-8 ~~[region designated under this chapter]~~. Property located in a
3-9 municipality's extraterritorial jurisdiction may be included in
3-10 the municipality's territory for the purposes of participation in
3-11 the program.

3-12 SECTION 6. Chapter 399, Local Government Code, is amended
3-13 by adding Section 399.0045 to read as follows:

3-14 Sec. 399.0045. AUTHORIZED USER FEE. (a) The program
3-15 administrator may collect a user fee imposed on each contract
3-16 entered into under the program.

3-17 (b) Fees collected under this section may be used only to
3-18 pay the costs of administering the program.

3-19 SECTION 7. The heading to Section 399.006, Local Government
3-20 Code, is amended to read as follows:

3-21 Sec. 399.006. LOCAL GOVERNMENT PARTICIPATION IN
3-22 [ESTABLISHMENT OF] PROGRAM.

3-23 SECTION 8. Sections 399.006(a), (b), and (e), Local
3-24 Government Code, are amended to read as follows:

3-25 (a) The governing body of a local government may determine
3-26 that it is convenient and advantageous to participate in
3-27 ~~[establish]~~ a program under this chapter.

3-28 (b) An authorized representative of the local government
3-29 that participates in the ~~[establishes a]~~ program may enter into a
3-30 written contract with a record owner of real property in the
3-31 territory of the local government ~~[a region designated under this~~
3-32 ~~chapter]~~ to impose an assessment to repay the owner's financing of a
3-33 qualified project on the owner's property. The financing to be
3-34 repaid through assessments may be provided by a third party or, if
3-35 authorized by the program, by the local government.

3-36 (e) The financing for which assessments are imposed may
3-37 include:

3-38 (1) the cost of materials and labor necessary for
3-39 installation or modification of a qualified improvement;

3-40 (2) permit fees;

3-41 (3) inspection fees;

3-42 (4) lender's fees;

3-43 (5) program application and administrative fees;

3-44 (6) project development and engineering fees;

3-45 (7) third-party review fees, including verification
3-46 review fees, under Section 399.011; ~~[and]~~

3-47 (8) a user fee authorized under Section 399.0045; and

3-48 (9) any other fees or costs that may be incurred by the
3-49 property owner incident to the installation, modification, or
3-50 improvement on a specific or pro rata basis, as determined by the
3-51 office ~~[local government].~~

3-52 SECTION 9. The heading to Section 399.008, Local Government
3-53 Code, is amended to read as follows:

3-54 Sec. 399.008. PROCEDURE FOR PARTICIPATION IN
3-55 [ESTABLISHMENT OF] PROGRAM.

3-56 SECTION 10. Section 399.008, Local Government Code, is
3-57 amended by amending Subsections (a), (b), and (d) and adding
3-58 Subsection (f) to read as follows:

3-59 (a) Except as provided by Subsection (f), to participate in
3-60 the ~~[To establish a]~~ program ~~[under this chapter]~~, the governing
3-61 body of a local government must ~~[take the following actions in the~~
3-62 ~~following order.~~

3-63 ~~[(1)]~~ adopt a resolution ~~[of intent]~~ that includes:

3-64 (1) ~~[(A)]~~ a finding that ~~[, if appropriate,]~~ financing
3-65 qualified projects through contractual assessments is a valid
3-66 public purpose;

3-67 (2) ~~[(B)]~~ a statement that the local government
3-68 intends to make contractual assessments to repay financing for
3-69 qualified projects available to property owners;

4-1 (3) [~~(C)~~] a description of the types of qualified
4-2 projects that may be subject to contractual assessments;
4-3 (4) [~~(D)~~] a description of the boundaries of the
4-4 ~~region;~~
4-5 [~~(E)~~] a description of any proposed arrangements
4-6 for third-party financing to be available or any local government
4-7 financing to be provided for qualified projects;
4-8 (5) [~~(F)~~] a description of local government debt
4-9 servicing procedures if third-party financing will be provided and
4-10 assessments will be collected to service a third-party debt;
4-11 (6) [~~(G)~~] a reference to the report on the proposed
4-12 program prepared as provided by Section 399.009 and a statement
4-13 identifying the location where the report is available for public
4-14 inspection;
4-15 [~~(H)~~] a statement of the time and place for a public
4-16 hearing on the proposed program;] and
4-17 (7) [~~(I)~~] a statement identifying the appropriate
4-18 representative of the local government and the appropriate
4-19 assessor-collector for purposes of consulting regarding collecting
4-20 the proposed contractual assessments imposed on the assessed
4-21 property[+
4-22 [~~(2)~~] hold a public hearing at which the public may
4-23 comment on the proposed program, including the report required by
4-24 Section 399.009; and
4-25 [~~(3)~~] adopt a resolution establishing the program and
4-26 the terms of the program, including:
4-27 [~~(A)~~] each item included in the report under
4-28 Section 399.009; and
4-29 [~~(B)~~] a description of each aspect of the program
4-30 that may be amended only after another public hearing is held].
4-31 (b) For purposes of Subsection (a)(1) [~~(a)(3)(A)~~], the
4-32 resolution may incorporate the report required by Section 399.009
4-33 [~~or the amended version of the report~~], as appropriate, by
4-34 reference.
4-35 (d) A local government may:
4-36 (1) hire and set the compensation of staff necessary
4-37 to participate in the program [~~a program administrator and program~~
4-38 ~~staff~~]; or
4-39 (2) contract for professional services necessary to
4-40 participate in the [~~administer a~~] program.
4-41 (f) A local government that established a program under this
4-42 chapter before September 1, 2019, may participate in the program by
4-43 passing a resolution stating that the local government is
4-44 participating. The resolution is not required to meet the
4-45 requirements of Subsection (a) or to include the report described
4-46 by Section 399.009.
4-47 SECTION 11. The heading to Section 399.009, Local
4-48 Government Code, is amended to read as follows:
4-49 Sec. 399.009. REPORT REGARDING PROGRAM [ASSESSMENT].
4-50 SECTION 12. Sections 399.009(a) and (c), Local Government
4-51 Code, are amended to read as follows:
4-52 (a) Before adopting a resolution under Section 399.008 to
4-53 join the program, a local government must prepare a [The] report,
4-54 consistent with guidelines adopted by the program administrator,
4-55 that includes [~~for a proposed program required by Section 399.008~~
4-56 ~~must include~~]:
4-57 (1) the items described by Section 399.0027(b) [~~a map~~
4-58 ~~showing the boundaries of the proposed region~~];
4-59 (2) [~~a form contract between the local government and~~
4-60 ~~the property owner specifying the terms of:~~
4-61 [~~(A)~~] assessment under the program; and
4-62 [~~(B)~~] financing provided by a third party or the
4-63 local government, as appropriate;
4-64 [~~(3)~~] if the proposed program provides for third-party
4-65 financing, a form contract between the local government and the
4-66 third party regarding the servicing of the debt through
4-67 assessments;
4-68 [~~(4)~~] a description of types of qualified projects that
4-69 may be subject to contractual assessments;

5-1 ~~[(5)]~~ a statement identifying a local government
5-2 representative authorized to enter into written contracts on behalf
5-3 of the local government;
5-4 (3) ~~[(6)]~~ a plan for ensuring sufficient capital for
5-5 third-party financing and, if appropriate, raising capital for
5-6 local government financing for qualified projects; and
5-7 (4) ~~[(7)]~~ if bonds will be issued to provide capital
5-8 to finance qualified projects as part of the program as provided by
5-9 Section 399.016, ~~[+~~
5-10 ~~[(A)]~~ a maximum aggregate annual dollar amount
5-11 for financing through contractual assessments to be provided by the
5-12 local government under the program ~~[+~~
5-13 ~~[(B) a method for ranking requests from property~~
5-14 ~~owners for financing through contractual assessments in priority~~
5-15 ~~order if requests appear likely to exceed the authorization amount;~~
5-16 ~~and~~
5-17 ~~[(C) a method for determining:~~
5-18 ~~[(i) the interest rate and period during~~
5-19 ~~which contracting owners would pay an assessment; and~~
5-20 ~~[(ii) the maximum amount of an assessment;~~
5-21 ~~[(8) a method for ensuring that the period of the~~
5-22 ~~contractual assessment does not exceed the useful life of the~~
5-23 ~~qualified project that is the basis for the assessment;~~
5-24 ~~[(9) a description of the application process and~~
5-25 ~~eligibility requirements for financing qualified projects to be~~
5-26 ~~repaid through contractual assessments under the program;~~
5-27 ~~[(10) a method as prescribed by Subsection (b) for~~
5-28 ~~ensuring that property owners requesting to participate in the~~
5-29 ~~program demonstrate the financial ability to fulfill financial~~
5-30 ~~obligations to be repaid through contractual assessments;~~
5-31 ~~[(11) a statement explaining the manner in which~~
5-32 ~~property will be assessed and assessments will be collected;~~
5-33 ~~[(12) a statement explaining the lender notice~~
5-34 ~~requirement provided by Section 399.010;~~
5-35 ~~[(13) a statement explaining the review requirement~~
5-36 ~~provided by Section 399.011;~~
5-37 ~~[(14) a description of marketing and participant~~
5-38 ~~education services to be provided for the program;~~
5-39 ~~[(15) a description of quality assurance and antifraud~~
5-40 ~~measures to be instituted for the program; and~~
5-41 ~~[(16) the procedures for collecting the proposed~~
5-42 ~~contractual assessments].~~
5-43 (c) The local government shall make the report available for
5-44 public inspection ~~[+~~
5-45 ~~[(1)]~~ on the local government's Internet website ~~[, and~~
5-46 ~~[(2) at the office of the representative designated to~~
5-47 ~~enter into written contracts on behalf of the local government~~
5-48 ~~under the program].~~
5-49 SECTION 13. Section 399.010, Local Government Code, is
5-50 amended to read as follows:
5-51 Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR
5-52 PARTICIPATION. Before a local government may enter into a written
5-53 contract with a record owner of real property to impose an
5-54 assessment to repay the financing of a qualified project under this
5-55 chapter:
5-56 (1) the holder of any mortgage lien on the property
5-57 must be given written notice of the owner's intention to
5-58 participate in the [a] program ~~[under this chapter]~~ on or before the
5-59 30th day before the date the written contract for assessment
5-60 between the owner and the local government is executed; and
5-61 (2) a written consent from the holder of the mortgage
5-62 lien on the property must be obtained.
5-63 SECTION 14. Section 399.011(a), Local Government Code, is
5-64 amended to read as follows:
5-65 (a) The [A] program ~~[established under this chapter]~~ must
5-66 require for each proposed qualified project:
5-67 (1) a review of water or energy baseline conditions
5-68 and the projected water or energy savings to establish the
5-69 projected water or energy savings; and

6-1 (2) a verification that a proposed qualified
6-2 improvement meets the requirements of a qualified project.

6-3 SECTION 15. Section 399.013(a), Local Government Code, is
6-4 amended to read as follows:

6-5 (a) The program administrator shall file on behalf of a [A]
6-6 local government that authorizes financing through contractual
6-7 assessments under this chapter ~~[shall file]~~ written notice of each
6-8 contractual assessment in the real property records of the county
6-9 in which the property is located.

6-10 SECTION 16. Section 399.016(b), Local Government Code, is
6-11 amended to read as follows:

6-12 (b) Bonds or notes issued under this section may not be
6-13 general obligations of the local government. The bonds or notes
6-14 must be secured by one or more of the following as provided by the
6-15 governing body of the local government in the resolution or
6-16 ordinance approving the bonds or notes:

6-17 (1) payments of contractual assessments on benefited
6-18 property ~~[in one or more specified regions designated under this~~
6-19 ~~chapter];~~

6-20 (2) reserves established by the local government from
6-21 grants, bonds, or net proceeds or other lawfully available funds;

6-22 (3) municipal bond insurance, lines of credit, public
6-23 or private guaranties, standby bond purchase agreements,
6-24 collateral assignments, mortgages, or any other available means of
6-25 providing credit support or liquidity; and

6-26 (4) any other funds lawfully available for purposes
6-27 consistent with this chapter.

6-28 SECTION 17. Section 399.018, Local Government Code, is
6-29 amended to read as follows:

6-30 Sec. 399.018. PROHIBITED ACTS. A local government that
6-31 participates in the program ~~[establishes a region under this~~
6-32 ~~chapter]~~ may not:

6-33 (1) make the issuance of a permit, license, or other
6-34 authorization from the local government to a person who owns
6-35 property in the territory of the local government ~~[region]~~
6-36 contingent on the person entering into a written contract to repay
6-37 the financing of a qualified project through contractual
6-38 assessments under this chapter; or

6-39 (2) otherwise compel a person who owns property in the
6-40 territory of the local government ~~[region]~~ to enter into a written
6-41 contract to repay the financing of a qualified project through
6-42 contractual assessments under this chapter.

6-43 SECTION 18. Section 399.019, Local Government Code, is
6-44 amended to read as follows:

6-45 Sec. 399.019. NO PERSONAL LIABILITY. The members of the
6-46 governing body of a local government, other elected officials of a
6-47 local government, employees of a local government, ~~[and]~~ board
6-48 members, executives, employees, and employees of the office or the
6-49 program administrator ~~[and contractors of a third party who enter~~
6-50 ~~into a contract with a local government to provide administrative~~
6-51 ~~services for a program under this chapter]~~ are not personally
6-52 liable as a result of exercising any rights or responsibilities
6-53 granted under this chapter.

6-54 SECTION 19. The following provisions of Chapter 399, Local
6-55 Government Code, are repealed:

- 6-56 (1) Section 399.002(6);
- 6-57 (2) Section 399.007;
- 6-58 (3) Sections 399.008(c) and (e);
- 6-59 (4) Section 399.009(b); and
- 6-60 (5) Section 399.017.

6-61 SECTION 20. (a) A local government that has established a
6-62 program for assessments for water and energy improvements under
6-63 Chapter 399, Local Government Code, as it existed before the
6-64 effective date of this Act, may continue the program only as
6-65 necessary for the fulfillment of contractual obligations. A local
6-66 government may not extend a contractual obligation in lieu of
6-67 satisfying the requirements for participation in the program for
6-68 assessments for water and energy improvements under Section
6-69 399.006, Local Government Code, as amended by this Act.

7-1 (b) A contract entered into under Chapter 399, Local
7-2 Government Code, as it existed before the effective date of this
7-3 Act, continues in effect until the term specified in the contract is
7-4 complete and is governed by the law in effect on the date the
7-5 contract was executed, and the former law is continued for that
7-6 purpose.
7-7 (c) The changes in law made by this Act do not invalidate or
7-8 otherwise affect bonds issued under Chapter 399, Local Government
7-9 Code, as it existed before the effective date of this Act, for the
7-10 purpose of financing a contract made under that chapter.
7-11 SECTION 21. This Act takes effect September 1, 2019.

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7-12