

BILL ANALYSIS

C.S.H.B. 3187
By: Keffer
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that technical and other changes are necessary to enable more efficient and cost-effective administration of programs under the Property Assessed Clean Energy Act. C.S.H.B. 3187 seeks to make these changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3187 amends the Local Government Code to make the establishment and operation of a program under the Property Assessed Clean Energy Act by a local government that is a municipality or county a governmental function for all purposes and to replace references in the act to a local government official with references to a local government representative. The bill removes the specification that the collecting of proposed contractual assessments be with property taxes in a statement included in a resolution of intent adopted by the governing body of a local government for the establishment of such a program identifying the appropriate entities for purposes of consulting regarding collecting proposed contractual assessments imposed on assessed property. The bill requires fees that offset the costs of administering a program that are assessed as a program application fee paid by the property owner requesting to participate in the program to be expressed as a set amount, a percentage of the amount of the assessment, or in any other manner.

C.S.H.B. 3187 requires a program to require for each proposed qualified project a verification that a proposed qualified improvement meets the requirements of a qualified project and establishes that such a verification conclusively establishes that the improvement is a qualified improvement and the project is a qualified project. The bill removes the requirement that the local government obtain verification that a qualified project was properly completed and is operating as intended and instead requires the local government to require written verification of such completion and operation. The bill prohibits a lien resulting from a contractual assessment from being contested on the basis that the improvement is not a qualified improvement or the project is not a qualified project after the notice of the contractual assessment is recorded. The bill specifies that the authority of a combination of local governments to agree to jointly implement or administer a program includes the authority to enter into an interlocal contract under the Interlocal Cooperation Act to jointly implement or administer a program. The bill authorizes local governments that are parties to such a contract to contract for program administration with entities listed in a specified provision of the Interlocal Cooperation Act

relating to contract supervision and administration. The bill waives personal liability for the members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program for a result of exercising any rights or responsibilities granted under the Property Assessed Clean Energy Act.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3187 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 399.003, Local Government Code, is amended to read as follows:

Sec. 399.003. EXERCISE OF POWERS.

(a) In addition to the authority provided by Chapter 376 for municipalities, the governing body of a local government that establishes a program in accordance with the requirements provided by Section 399.008 may exercise powers granted under this chapter.

(b) The establishment of a program under this chapter by a local government is a governmental function for all purposes.

SECTION 2. Sections 399.006(b) and (c), Local Government Code, are amended.

SECTION 3. Section 399.007(a), Local Government Code, is amended.

SECTION 4. Sections 399.008(a) and (e), Local Government Code, are amended to read as follows:

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

(1) adopt a resolution of intent that includes:

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

(B) a statement that the local government

HOUSE COMMITTEE SUBSTITUTE

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(b) The establishment and operation of a program under this chapter by a local government is a governmental function for all purposes.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Sections 399.008(a) and (e), Local Government Code, are amended to read as follows:

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

(1) adopt a resolution of intent that includes:

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

(B) a statement that the local government

intends to make contractual assessments to repay financing for qualified projects available to property owners;

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

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

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

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

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

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

(I) a statement identifying the appropriate representative of the local government ~~[official and the appropriate assessor-collector]~~ for purposes of consulting regarding collecting the proposed contractual assessments ~~[with property taxes]~~ imposed on the assessed property;

(2) hold a public hearing at which the public may comment on the proposed program, including the report required by Section 399.009; and

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

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

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

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

(1) a program application fee paid by the property owner requesting to participate in the program expressed as a set amount, a percentage of the amount of the assessment, or in any other manner;

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

intends to make contractual assessments to repay financing for qualified projects available to property owners;

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

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

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

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

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

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

(I) a statement identifying the appropriate representative of the local government ~~[official]~~ and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments ~~[with property taxes]~~ imposed on the assessed property;

(2) hold a public hearing at which the public may comment on the proposed program, including the report required by Section 399.009; and

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

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

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

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

(1) a program application fee paid by the property owner requesting to participate in the program expressed as a set amount, a percentage of the amount of the assessment, or in any other manner;

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

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

SECTION 5. Sections 399.009(a) and (c), Local Government Code, are amended to read as follows:

- (a) The report for a proposed program required by Section 399.008 must include:
 - (1) a map showing the boundaries of the proposed region;
 - (2) a form contract between the local government and the property owner specifying the terms of:
 - (A) assessment under the program; and
 - (B) financing provided by ~~[a third party or]~~ the local government, if applicable [as appropriate];
 - (3) if the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;
 - (4) a description of types of qualified projects that may be subject to contractual assessments;
 - (5) a statement identifying a local government representative ~~[official]~~ authorized to enter into written contracts on behalf of the local government;
 - (6) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;
 - (7) if bonds will be issued to provide capital to finance qualified projects as part of the program as provided by Section 399.016:
 - (A) a maximum aggregate annual dollar amount for financing through contractual assessments to be provided by the local government under the program;
 - (B) a method for ranking requests from property owners for financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and
 - (C) a method for determining:
 - (i) the interest rate and period during which contracting owners would pay an assessment; and
 - (ii) the maximum amount of an assessment;
 - (8) a method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;
 - (9) a description of the application process

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

SECTION 5. Sections 399.009(a) and (c), Local Government Code, are amended to read as follows:

- (a) The report for a proposed program required by Section 399.008 must include:
 - (1) a map showing the boundaries of the proposed region;
 - (2) a form contract between the local government and the property owner specifying the terms of:
 - (A) assessment under the program; and
 - (B) financing provided by a third party or the local government, as appropriate;
 - (3) if the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;
 - (4) a description of types of qualified projects that may be subject to contractual assessments;
 - (5) a statement identifying a local government representative ~~[official]~~ authorized to enter into written contracts on behalf of the local government;
 - (6) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;
 - (7) if bonds will be issued to provide capital to finance qualified projects as part of the program as provided by Section 399.016:
 - (A) a maximum aggregate annual dollar amount for financing through contractual assessments to be provided by the local government under the program;
 - (B) a method for ranking requests from property owners for financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and
 - (C) a method for determining:
 - (i) the interest rate and period during which contracting owners would pay an assessment; and
 - (ii) the maximum amount of an assessment;
 - (8) a method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;
 - (9) a description of the application process

and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

- (10) a method as prescribed by Subsection (b) for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through contractual assessments;
- (11) a statement explaining the manner in which property will be assessed and assessments will be collected;
- (12) a statement explaining the lender notice requirement provided by Section 399.010;
- (13) a statement explaining the review requirement provided by Section 399.011;
- (14) a description of marketing and participant education services to be provided for the program;
- (15) a description of quality assurance and antifraud measures to be instituted for the program; and
- (16) the procedures for collecting the proposed contractual assessments.

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

- (1) on the local government's Internet website; and
- (2) at the office of the representative [official] designated to enter into written contracts on behalf of the local government under the program.

No equivalent provision.

and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

- (10) a method as prescribed by Subsection (b) for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through contractual assessments;
- (11) a statement explaining the manner in which property will be assessed and assessments will be collected;
- (12) a statement explaining the lender notice requirement provided by Section 399.010;
- (13) a statement explaining the review requirement provided by Section 399.011;
- (14) a description of marketing and participant education services to be provided for the program;
- (15) a description of quality assurance and antifraud measures to be instituted for the program; and
- (16) the procedures for collecting the proposed contractual assessments.

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

- (1) on the local government's Internet website; and
- (2) at the office of the representative [official] designated to enter into written contracts on behalf of the local government under the program.

SECTION 6. Section 399.011, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) A program established under this chapter must require for each proposed qualified project:

- (1) a review of water or energy baseline conditions and the projected water or energy savings to establish the projected water or energy savings; and
- (2) a verification that a proposed qualified improvement meets the requirements of a qualified project.

(a-1) A verification provided as required under Subsection (a)(2) conclusively establishes that the improvement is a qualified improvement and the project is a qualified project.

(b) After a qualified project is completed, the local government shall require written

[~~obtain~~] verification that the qualified project was properly completed and is operating as intended.

No equivalent provision.

SECTION 7. Section 399.014, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) After the notice of a contractual assessment is recorded as provided under Section 399.013, the lien may not be contested on the basis that the improvement is not a qualified improvement or the project is not a qualified project.

No equivalent provision.

SECTION 8. Sections 399.017(a) and (c), Local Government Code, are amended to read as follows:

(a) Any combination of local governments may agree to jointly implement or administer a program under this chapter, including entering into an interlocal contract under Chapter 791, Government Code, to jointly implement or administer a program.

(c) One or more local governments may contract with a third party, including another local government, to administer a program. Local governments that are parties to an interlocal contract described by Subsection (a) may contract with an entity listed in Section 791.013, Government Code, for program administration.

No equivalent provision.

SECTION 9. Chapter 399, Local Government Code, is amended by adding Section 399.019 to read as follows:

Sec. 399.019. NO PERSONAL LIABILITY. The members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter are not personally liable as a result of exercising any rights or responsibilities granted under this chapter.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not

SECTION 10. Same as introduced version.

receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.