

BILL ANALYSIS

Senate Research Center
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S.B. 459
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, the legislature passed H.B. 1937, relating to the voluntary assessment of property owners by a municipality to finance certain energy conservation improvements. The bill authorized Texas municipalities to make financing available to qualified property owners to assist with the cost of installing renewable energy devices or investing in energy efficiency improvements. The property owners would repay the financed amount over a number of years through their property tax bills. The obligation remains with the property if the owner changes.

The financing program, sometimes known as Property-Assessed Clean Energy (PACE), is based on successful models in other states and many years of financing other public improvements in Texas through similar assessments. Residential and commercial property owners interested in reducing their long-term utility bills are often deterred by the upfront costs of the conservation investments. By allowing participants to make payments over a longer time period, the model makes these investments more affordable. In the absence of this program, property owners also may be deterred from making the investments if they believe they may sell the property in the future, transferring the utility bill savings to the next owner but continuing to make payments. By attaching the obligation to the property instead of the owner, the program addresses that concern.

The program is voluntary for both municipalities and property owners.

Officials in several Texas municipalities have expressed interest in implementing the program authorized by H.B. 1937. However, Fannie Mae and Freddie Mac have issued mortgage guidelines that suspended PACE programs throughout the nation.

S.B. 459 would reaffirm that the conservation and economic development goals of the PACE program serve a public purpose. The bill directs a participating municipality to consult with the assessor-collector and explicitly authorizes the assessor-collector to collect the assessments from participating property owners. The bill directs a participating municipality to file a record of each contractual assessment with the county. The bill states that PACE assessments have the same priority as liens for municipal property taxes and other assessments. The bill allows a municipality to use the program to finance water conservation.

As proposed, S.B. 459 amends current law relating to voluntary assessment of property owners by a municipality to finance water or energy efficiency improvements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 376, Local Government Code, by adding Section 376.0001, as follows:

Sec. 376.0001. FINDINGS. Provides that the legislature finds that the contractual assessment of property to finance water or energy efficiency public improvements or the

installation of distributed generation renewable energy sources or water or energy efficiency improvements described by this chapter as authorized by this chapter serves the public purposes of economic development and water and energy conservation.

SECTION 2. Amends Section 376.001, Local Government Code, as follows:

Sec. 376.001. **AUTHORIZED FINANCING.** Authorizes an assessment under this chapter to finance water or energy efficiency public improvements to developed lots for which the costs and time delays or creating an entity under law to assess the lot would be prohibitively large relative to the cost or the water or energy efficiency public improvement to be financed, and the installation of distributed generation renewable energy sources or water or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

SECTION 3. Amends Sections 376.004(a) and (b), Local Government Code, as follows:

(a) Authorizes the governing body of a municipality to determine that it is convenient and advantageous to designate an area of the municipality within which authorized municipal officials and property owners are authorized to enter into contracts to assess properties for water or energy efficiency public improvements described by Section 376.001(1) (Authorized Financing) and make financing arrangements under this chapter.

(b) Authorizes the governing body of a municipality to determine that it is convenient, advantageous, and in the public interest to designate an area of the municipality within which authorized municipal officials and property owners are authorized to enter into contracts to assess properties to finance the installation of distributed generation renewable energy sources or water or energy efficiency improvements that are permanently fixed to real property.

SECTION 4. Amends Sections 376.005(b), (c), and (d), Local Government Code, as follows:

(b) Requires that the resolution of intention, in addition to certain provisions, identify the types of water or energy efficiency public improvements, distributed generation renewable energy resources, or water or energy efficiency improvements that are authorized to be financed.

(c) Requires that the resolution of intention, if the contractual assessments are to be used to finance the installation of distributed generation renewable energy sources or water or energy efficiency improvements that are permanently fixed to real property, state that it is in the public interest to do so.

(d) Requires that the resolution of intention direct an appropriate municipal official, in addition to a certain provision, to consult with the appropriate assessor and collector as provided by Section 376.009, rather than appraisal district or districts, regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property.

SECTION 5. Amends Sections 376.006 and 376.007, Local Government Code, as follows:

Sec. 376.006. **REPORT REGARDING ASSESSMENT.** Requires an appropriate municipal official designated in the resolution of intention to prepare a report containing, in addition to certain criteria, a statement of municipal policies concerning contractual assessments including, in addition to certain provisions, identification of types of water or energy efficiency public improvements, distributed generation renewable energy resources, or water or energy efficiency improvements that are authorized to be financed through the use of contractual assessments; and the results of the consultations with the appropriate assessor and collector as provided by Section 376.009 regarding collecting, the proposed contractual assessments with property taxes imposed on the assessed property, rather than the result of the consultations with the appropriate appraisal districts

concerning incorporating the proposed contractual assessments into the assessments of property taxes.

Sec. 376.007. **DIRECT PURCHASE BY OWNER.** Authorizes that the proposed arrangements for financing the program pertaining to the installation of distributed generation renewable energy sources or water or energy efficiency improvements that are permanently fixed to real property, on written consent of an authorized municipal official, authorize the property owner to purchase directly the related equipment and materials for the installation of the distributed generation renewable energy sources or water or energy efficiency improvements and to contract directly for the installation of the distributed generation renewable energy sources or water or energy efficiency improvements.

SECTION 6. Amends Chapter 376, Local Government Code, by adding Section 376.0071, as follows:

Sec. 376.0071. **RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT REQUIRED.** (a) Requires a municipality that authorizes financing through contractual assessments under this chapter to file written notice of each contractual assessment in the real property records of the county in which the property is located.

(b) Requires that the written be in recordable form and contain certain provisions.

SECTION 7. Amends Section 376.008, Local Government Code, as follows:

Sec. 376.008. **LIEN.** (a) Creates this subsection from existing text. Provides that a contractual assessment under this chapter, rather than an assessments imposed under this chapter, and any interest or penalties on the assessment is a first and prior lien against the lot on which the assessment is imposed until the assessment, interest, or penalty is paid, and has the same priority as a lien for municipal property taxes. Makes nonsubstantive changes.

(b) Provides that the lien runs with the land, and that portion of an assessment under the assessment contract that has not yet come due is not eliminated by foreclosure of a property tax lien.

(c) Authorizes that the assessment lien, to the extent practicable, be enforced by the municipality in the same manner that a property tax lien against real property is authorized to be enforced by the municipality.

(d) Requires that delinquent installments of the assessment incur interest and penalties in the same manner as delinquent property taxes.

(e) Authorizes a municipality to recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

SECTION 8. Amends Chapter 376, Local Government Code, by adding Section 376.009, as follows:

Sec. 376.009. **COLLECTION OF ASSESSMENTS.** (a) Requires the assessor and collector for the municipality, if the municipality authorizing financing through contractual assessments under this chapter imposes property taxes, to collect the assessments under this chapter. Requires the assessor and collector, if the property on which an assessment is imposed is subject to property taxation, to include the assessment in the tax bill prepared and mailed as provided by Section 31.01 (Tax Bills), Tax Code. Requires that the tax bill separately state the amount of an assessment imposed under this chapter.

(b) Authorizes the municipality, if the municipality does not impose property taxes, to collect the assessments under this chapter or to contract with a third

party, including the county assessor-collector, to collect the assessments. Provides that the county assessor-collector has the authority to collect assessments under this chapter as provided by this subsection.

(c) Requires the assessor and collector for the municipality, if the municipality collects its own property taxes and the governing body of the municipality authorizes split payment of taxes under Section 31.03 (Split Payment of Taxes), Tax Code, to consider an assessment imposed under this chapter and included in the tax bill a municipal tax in applying each payment for a person who makes split payments.

(d) Requires an assessor and collector that accepts a partial payment on a tax bill that includes more than one taxing unit and includes an assessment under this chapter to consider the assessment a municipal tax in allocating partial payments among taxing units as provided by Section 31.07 (Certain Payments Accepted), Tax Code. Requires an assessor and collector that accepts a partial payment on a tax bill that includes only a municipal tax and an assessment under this chapter to allocate the partial payment in proportion to the amount of the municipal taxes and the assessment included in the bill.

SECTION 9. Effective date: upon passage or September 1, 2011.