

SUBJECT: Financing renewable energy systems and energy efficiency improvements

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 6 ayes — Keffer, Crabb, Farabee, Gonzalez Toureilles, Hardcastle, Strama

0 nays

3 absent — Crownover, Craddick, Rios Ybarra

WITNESSES: For — Robert King, Efficiency Texas Coalition; Luke Metzger, Environment Texas; John Pitts, Texas Renewable Energy Industries Association; Bret Raymis, Alamo Solar Manufacturing; Cyrus Reed, Lone Star Chapter, Sierra Club; Mike Sloan, Bergey Wind, Southwest Windpower, Entegrity Wind; Tom Smith, Public Citizen; Billy Stanbery, Heliovolt Corporation; William Van Dell, Smart Spark Energy Systems; Raymond Walker, Standard Renewable Energy, LP; (*Registered, but did not testify*: Cliff Braddock, Rich Herweck, Texas CHP Initiative; Colin Meehan, Environmental Defense Fund; Bee Moorhead, Texas Impact; Patrick Reinhart, Solar Alliance; Steve Taylor, Applied Materials; Christopher Winland)

Against — None

On — (*Registered, but did not testify*: Barry Smitherman, Public Utility Commission of Texas)

DIGEST: CSHB 1391 would allow a local government to create an emissions management district to finance through contractual assessments emissions management projects, such as a renewable energy system or energy efficiency improvements, in order to reduce energy consumption in a residential or commercial building. The bill would provide instructions to local governments for creating and financing a district, and levying an assessment. Also, the bill contains provisions regarding the liability of the local governments, requirements for the participating property owners and the project vendors and installers, and definitions.

**Creation of an emissions management district.** A local government, by ordinance or order, would be allowed to establish emissions management

districts. The ordinance or order creating the district would have to designate:

- the district's territory in which property owners were eligible to participate in contractual assessments;
- the kinds of emissions management projects eligible for financing by the local government; and
- the date and time of the hearing to create the district.

The ordinance or order would have to include a finding that the emissions management projects served a public purpose of the local government by reducing emissions and energy consumption.

The ordinance or order also would have to include requirements for property owners participating in the financing of emissions management projects, including that a property owner did not have any history of delinquency in property taxes or mortgage payments for the property. The local government could prioritize applications for participation in financing based on the relative strength of the applicants' financial standing.

The local government could appoint a manager, administrator, or board to oversee and manage emissions management project financing in the district.

CSHB 1391 would provide that acquisition, installation, or improvement of public renewable energy improvements be added as a public improvement project under the Local Government Code, sec. 372.003(b).

**Financing of projects in emissions management districts.** A local government would be able to:

- enter into contractual assessment agreements to finance the purchase and installation of emissions management projects;
- make other innovative arrangements to finance the purchase and installation of emissions management projects;
- lease equipment and materials; and
- issue revenue bonds to finance activities.

The local government would establish, by official action, the terms of the agreement, including the term of the assessments and the rate of interest.

A contract could allow the property owner to purchase the equipment and materials and contract for the installation of a renewable energy system or an energy efficiency improvement.

**Levy of assessment.** After the local government and property owner had entered into a contractual assessment agreement, the local government would be required to levy the assessments against the property. The amount of the assessment would have to be enough to pay the amount of the contract for the improvement, the interest, and the administrative costs associated with operating the district.

The local government would be required to make a reasonable effort to collect assessment payments in the same manner as property taxes and have an assessment roll prepared showing the assessments against each property. The assessment roll would be filed with the secretary, would be made available to the county tax assessor-collector, and would be open for public inspection.

**Lien and interest on assessments.** An assessment, including interest and penalties, would be a lien against the property until paid, enforceable by a local government in the same manner that an ad valorem tax lien against real property could be enforced. Delinquent installments would incur interest, penalties, and attorney's fees.

Assessments would bear interest at a rate specified by the local government and could not exceed a rate that was 0.5 percent higher than the interest rate on the debt used to finance the improvement. Interest between the effective date of the contract and the date the first installment, and any related penalty, would be added to the first installment. Interest or penalties on all unpaid installments would be required to be added to each subsequent installment until paid.

After notice and hearing, the local government could make supplemental assessments to correct an omission or mistake.

**Local government liability for emissions management projects.** A local government:

- would not be liable for any damages arising from the purchase, installation, or use of any equipment relating to the project;
- would not be responsible for the maintenance of any equipment;

- would not be responsible for the purchase of insurance; and
- would have no duty to respond to a complaint.

A local government would not guarantee or otherwise secure loans for the purchase and installation of emissions management projects.

**District financing provisions.** A local government that created a district would be required to:

- pay costs associated with financing emissions management projects, except that any bonds would be payable solely from assessment payments; and
- have revenue bonds authorized and registered in the same manner as revenue bonds that were issued for a public improvement district.

The holder of a bond would not be not entitled to demand payment of the bond with any money raised by taxation.

A local government that created a district could:

- establish a special improvement fund for the district, but could not levy a tax to support the fund;
- issue revenue bonds payable solely from assessment payments;
- pledge assessment payment revenue from contractual assessment agreements; and
- issue refunding bonds.

**Emissions management project vendors and installers.** Before making a sale of components for an emissions management project, a vendor would be required to provide an estimate of the savings associated with the emissions management project.

The comptroller's State Energy Conservation Office (SECO) would be required to establish guidelines to assist local governments in compiling lists of contractors eligible to sell or install emissions management projects and project components. An ordinance or order creating a district could provide for consolidated payment for multiple projects by a single vendor. Competitive bidding requirements would not apply.

**Effective date.** The bill would take effect September 1, 2009.

**SUPPORTERS SAY:** CSHB 1391 would empower the governing board of a local government to create special purpose financing districts called emissions management districts (EMD). These districts are modeled after public improvement districts and would establish a framework that would alleviate the prohibitive upfront costs associated with renewable technologies and installation. The program would give homeowners or businesses the option of participating. These projects would save consumers money on their electric bill while reducing emissions.

**OPPONENTS SAY:** No apparent opposition.

**NOTES:** The committee substitute differs from the bill as filed by:

- removing provisions that would include emissions management districts in the Texas Emissions Reduction Plan at the Texas Commission on Environmental Quality;
- removing a provision requiring five individuals to be the initial directors of the district;
- removing a provision specifying that a district was a special district and a political subdivision of the state;
- removing a provision that a district can guarantee or secure loans, or apply for grants;
- adding a provision that the assessment amount had to be enough to pay the contract for the improvement, interest and administrative costs;
- adding a provision that the local government would make reasonable effort to collect assessment payments in the same manner as property taxes are collected;
- requiring an assessment roll be made available to the tax collector-assessor;
- requiring the interest rate not exceed a rate that was .5 percent higher than the interest rate on the improvement;
- providing that local governments would enforce an assessment in the same manner as a property tax lien;
- removing the provision prohibiting a district from exercising eminent domain;
- requiring SECO to establish guidelines to assist local governments in compiling lists of contractors;

- requiring a vendor to provide estimate of savings;
- establishing local government liability; and
- establishing requirement for property owners to participate.