

## **BILL ANALYSIS**

Senate Research Center  
86R21801 SLB-D

C.S.S.B. 1281  
By: Birdwell  
Natural Resources & Economic Development  
4/7/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1281 proposes to administer the Property Assessed Clean Energy (PACE) program as one statewide program governed by best practices and invite local governments to opt-in if they so choose. The bill establishes oversight of the program by the State Energy Conservation Office (SECO) in the Office of the Comptroller of Public Accounts of the State of Texas using its existing authority. The bill amends the PACE Act to rely on SECO to issue an RFP selecting a third-party to administer the program to create the most efficient, cost effective way to bring the Texas sized PACE Economic Development program to all of Texas. Oversight of this financing program by SECO in the future will serve to ensure that the third-party administrator is acting only as a government representative and does not engage in any market activity that it oversees.

S.B. 1281 eliminates the burdens of establishing and administering local programs and is intended to expedite the availability of the PACE program in all parts of Texas, so that rural and urban businesses can take advantage of PACE to address deferred maintenance with energy and water saving improvements. Uniform underwriting and technical standards across the state will result in uniform training, review of projects, quality control and application by keeping quality program protections in place. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1281 amends current law relating to assessments for water and energy improvements in certain municipalities and counties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the State Energy Conservation Office in SECTION 3 (Section 399.0023, Local Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Chapter 399, Local Government Code, to read as follows:

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT  
PROPERTY ASSESSMENTS

SECTION 2. Amends Section 399.002, Local Government Code, by adding Subdivisions (1-a) and (2-a) and amending Subdivision (2), as follows:

(1-a) Defines "office" as the State Energy Conservation Office (SECO).

(2) Redefines "program" as the program, rather than a program, established under this chapter.

(2-a) Defines "program administrator."

SECTION 3. Amends Chapter 399, Local Government Code, by adding Sections 399.0023, 399.0025, 399.0027, and 399.0029, to follows:

Sec. 399.0023. RULES. Requires SECO to adopt rules to administer the program.

Sec. 399.0025. PROGRAM ADMINISTRATOR. (a) Requires SECO to administer the program through a third-party administrator selected under this section.

(b) Requires SECO, in selecting the program administrator, to select the candidate that demonstrates:

- (1) best practices in program design;
- (2) compliance with applicable ethics requirements; and
- (3) appropriate underwriting and technical standards.

(c) Requires the program administrator to oversee program elements, including implementing:

- (1) guidelines;
- (2) documentation, underwriting, and technical standards; and
- (3) administrative protocols as described by Section 399.0027.

Sec. 399.0027. ADMINISTRATION. (a) Requires SECO to review and either approve or request revision of administration protocols developed under this section.

(b) Requires the program administrator to develop:

(1) 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;

(2) 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;

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

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

(5) a method for determining:

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

(B) the maximum amount of an assessment;

(6) 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;

- (7) a description of the application process and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;
- (8) a method 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;
- (9) the manner in which property will be assessed and assessments will be collected;
- (10) the lender notice required by Section 399.010 (Notice to Mortgage Holder Required for Participation);
- (11) the review required by Section 399.011 (Review Required);
- (12) marketing and participant education services to be provided for the program;
- (13) quality assurance and antifraud measures;
- (14) procedures for collecting the proposed contractual assessments; and
- (15) any other item necessary for the administration of the program or as directed by SECO.

Sec. 399.0029. DEMONSTRATION OF FINANCIAL ABILITY. Requires the method for ensuring a demonstration of financial ability under Section 399.0027(b)(8) to be based on appropriate underwriting factors, including:

- (1) providing for verification that:
  - (A) the property owner requesting to participate under the program:
    - (i) is the legal owner of the benefited property;
    - (ii) is current on mortgage and property tax payments; and
    - (iii) is not insolvent or in bankruptcy proceedings; and
  - (B) the title of the benefited property is not in dispute; and
- (2) requiring an appropriate ratio of the amount of the assessment to the assessed value of the property.

SECTION 4. Amends Sections 399.003, Local Government Code, as follows:

Sec. 399.003. New heading: EXERCISE OF POWERS BY LOCAL GOVERNMENT.  
 (a) Authorizes the governing body of a local government that participates in the program, rather than establishes a program in accordance with the requirements provided by Section 399.008 (Procedure for the Establishment of Program), in addition to the authority provided by Chapter 376 (Contractual Assessments for Energy Efficiency Improvements) for municipalities, to exercise powers granted under the program, rather than under this chapter.

(b) Provides that participation in the program, rather than the establishment and operation of a program under this chapter, by a local government is a governmental function for all purposes.

SECTION 5. Amends Section 399.004(a), Local Government Code, as follows:

(a) Authorizes an assessment under this chapter to be imposed to repay the financing of qualified projects on real property located in the territory of a local government participating in the program, rather than in a region designated under this chapter. Authorizes property located in a municipality's extraterritorial jurisdiction to be included in the municipality's territory for the purposes of participation in the program.

SECTION 6. Amends Chapter 399, Local Government Code, by adding Section 399.0045, as follows:

Sec. 399.0045. AUTHORIZED USER FEE. (a) Authorizes the program administrator to collect a user fee imposed on each contract entered into under the program.

(b) Authorizes fees collected under this section to be used only to pay the costs of administering the program.

SECTION 7. Amends the heading to Section 399.006, Local Government Code, to read as follows:

Sec. 399.006. LOCAL GOVERNMENT PARTICIPATION IN PROGRAM.

SECTION 8. Amends Sections 399.006(a), (b), and (e), Local Government Code, as follows:

(a) Authorizes the governing body of a local government to determine that it is convenient and advantageous to participate in, rather than establish, a program under this chapter.

(b) Authorizes an authorized representative of the local government that participates in the program, rather than establishes a program, to enter into a written contract with a record owner of real property in the territory of the local government, rather than in a region designated under this chapter, to impose an assessment to repay the owner's financing of a qualified project on the owner's property.

(e) Authorizes the financing for which assessments are imposed to include certain fees, including a user fee authorized under Section 399.0045 and any other fees or costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by SECO, rather than by the local government.

SECTION 9. Amends the heading to Section 399.008, Local Government Code, to read as follows:

Sec. 399.008. PROCEDURE FOR PARTICIPATION IN PROGRAM.

SECTION 10. Amends Sections 399.008(a), (b), and (d), Local Government Code, as follows:

Deletes existing designations for Paragraphs (a)(D)-(H) and redesignates existing Paragraphs (A)-(I) as Subdivisions (1)-(7).

(a) Requires the governing body of a local government, except as provided by Subsection (f), to participate in the program, rather than establish a program under this chapter, to adopt a resolution of intent that includes:

(1)-(3) makes no further changes to these subdivisions;

(4) deletes existing text requiring the adoption of a resolution of intent that includes a description of the boundaries of the region;

(5) makes no further changes to this subdivision;

(6) deletes existing text requiring the adoption of a resolution of intent that includes a statement of the time and place for a public hearing on the proposed program; and

(7) deletes existing text requiring the governing body of a local government to hold a public hearing at which the public may comment on the proposed program, including the report required by Section 399.009, and to adopt a resolution establishing the program and the terms of the program, including each item included in the report under Section 399.009 and a description of each aspect of the program that may be amended only after another public hearing is held.

(b) Authorizes the resolution, for purposes of Subsection (a)(1), rather than (a)(3)(A), to incorporate the report required by Section 399.009, as appropriate, by reference, rather than the report or the amended version of the report, as appropriate, by reference.

(d) Authorizes a local government to hire and set the compensation of staff necessary to participate in the program, rather than hire and set the compensation of a program administrator and program staff, or to contract for professional services necessary to participate in the program, rather than necessary to administer a program.

(f) Authorizes a local government that established a program under this chapter before September 1, 2019, to participate in the program by passing a resolution stating that the local government is participating. Provides that the resolution is not required to meet the requirements of Subsection (a) or to include the report described by Section 399.009.

SECTION 11. Amends the heading to Section 399.009, Local Government Code, to read as follows:

Sec. 399.009. REPORT REGARDING PROGRAM.

SECTION 12. Amends Sections 399.009(a) and (c), Local Government Code, as follows:

(a) Requires a local government, before adopting a resolution under Section 399.008 to join the program, to prepare a report, consistent with guidelines adopted by the program administrator, that includes the items described by Section 399.0027(b) and certain information. Deletes existing text requiring a report for a proposed program required by Section 399.008 to include certain other information.

(c) Requires the local government to make the report available for public inspection on the local government's Interest website, rather than on the local government's Internet website and at the office of the representative designated to enter into written contracts on behalf of the local government under the program.

SECTION 13. Amends Section 399.010, Local Government Code, as follows:

Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR PARTICIPATION. Provides that before a local government is authorized to enter into a written contract with a record owner of real property to impose an assessment to repay the financing of a qualified project under this chapter:

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

(2) makes no changes to this subdivision.

SECTION 14. Amends Section 399.011(a), Local Government Code, to require the program, rather than a program established under this chapter, to require for each proposed qualified project a certain review and verification.

SECTION 15. Amends Section 399.013(a), Local Government Code, as follows:

(a) Requires the program administrator to file on behalf of a local government that authorizes financing through contractual assessments under this chapter, rather than requires a local government 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.

SECTION 16. Amends Section 399.016(b), Local Government Code, as follows:

(b) Prohibits bonds or notes issued under this section from being general obligations of the local government. Requires the bonds or notes to be secured by one or more of the following as provided by the governing body of the local government in the resolution or ordinance approving the bonds or notes:

(1) payments of contractual assessments on benefited property, rather than payments of contractual assessments on benefited property in one or more specified regions designated under this chapter; and

(2)–(4) makes no changes to these subdivisions.

SECTION 17. Amends Section 399.018, Local Government Code, as follows:

Sec. 399.018. PROHIBITED ACTS. Prohibits a local government that participates in the program, rather than establishes a region under this chapter, from:

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

(2) makes conforming change to this subdivision.

SECTION 18. Amends Section 399.019, Local Government Code, as follows:

Sec. 399.019. NO PERSONAL LIABILITY. Provides that the members of the governing body of a local government, other elected officials of a local government, employees of a local government, board members, executives, employees, and employees of SECO or the program administrator, are not personally liable as a result of exercising any rights or responsibilities granted under this chapter. Deletes existing text relating to contractors of a third party who provide certain administrative services and makes a nonsubstantive change.

SECTION 19. Repealer: Section 399.002(6) (relating to the definition of "region"), Local Government Code.

Repealer: Section 399.007 (Designation of Region), Local Government Code.

Repealer: Section 399.008(c) (relating to authorizing the governing body of a local government to amend a program by resolution) and (e) (relating to authorizing a local government to impose certain fees to offset the costs of administering a program), Local Government Code.

Repealer: Section 399.009(b) (relating to establishing the method for ensuring a demonstration of financial ability), Local Government Code.

Repealer: Section 399.017 (Joint Implementation), Local Government Code.

SECTION 20. (a) Provides that a political subdivision that has established a program for assessments for water and energy improvements under Chapter 399, Local Government Code, as it existed before the effective date of this Act, is considered to have satisfied the requirements for participation in the program for assessments for water and energy improvements under Section 399.006, Local Government Code, as amended by this Act.

(b) Provides that a contract entered into under Chapter 399, Local Government Code, as it existed before the effective date of this Act, continues in effect until the term specified in the contract is complete, and is governed by the law in effect on the date the contract was executed and the former law is continued for that purpose.

(c) Provides that the changes in law made by this Act do not invalidate or otherwise affect bonds issued under Chapter 399, Local Government Code, as it existed before the effective date of this Act, for the purpose of financing a contract made under that chapter.

SECTION 21. Effective date: September 1, 2019.