

Local Government Pace In A Box Implementation Outline



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Outline of the Tasks and Decisions Required to Create a PACE Program under SB 385, Chapter 399 of the Local Government Code

To create a PACE program, a county or municipality (“local government”) must make a number of decisions:

1) How will the program be administered?

- a. A local government may:
 - i. **administer the program itself**; this involves hiring and setting the compensation of a program administrator and program staff, or contracting for the professional services necessary to administer the program, 12 Tex. Loc. Gov’t Code § 399.008(d);
 - ii. **jointly implement a regional program**; a local government may implement a program with any combination of other local governments, working with other local governments may help to promote uniform and sustainable programs, *see id.* at § 399.017; or
 - iii. **contract with a third party to administer the program**. Before contracting with a third party administrator, a local government should use a Request for Proposal (RFP) to judge the potential administrator’s qualifications, experience, and capabilities, *see id.* at § 399.008(d).

2) What will the boundaries for the program’s region be?

- a. A region’s boundaries can be separate, overlapping, or coterminous. *Id.* at § 399.007(d).
- b. A local government can designate one or multiple regions for implementing a program located within the local government’s jurisdiction (a municipality’s jurisdiction includes the municipality’s extraterritorial jurisdiction). *Id.* at § 399.007(b) – 399.007(d).

3) How will the local government finance eligible projects?

- a. A local government must develop a form contract between the local government and the property owner specifying the terms of assessment under the program and the terms of financing provided by a third party or local government. *Id.* at § 399.009(a)(2).

- b. If 3rd party financing:
 - i. develop a plan to ensure sufficient capital; and
 - ii. develop a form contract between the local governments and the third party regarding the servicing of the debt through assessments. *Id.* at §§ 399.009(a)(3), 399.009(a)(6).
- c. If the local government will finance the project, develop a plan to raise capital. *Id.* at § 399.009(a)(6).
- d. If bonds will be issued to provide capital to finance qualified projects:
 - i. decide what the maximum annual dollar amount for financing projects through contractual assessments provided by the local government will be, *id.* at § 399.009(a)(7)(A);
 - ii. determine a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum amount, *id.* at § 399.009(a)(7)(B);
 - iii. develop a procedure for determining the interest rate and period during which contracting owners would pay an assessment, *id.* at § 399.009(a)(8); and
 - iv. develop a procedure for determining the maximum amount of an assessment, *id.* at § 399.009(a)(7)(C).
- e. Develop a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations. *Id.* at § 399.009(a)(10)
- f. Develop a method for ensuring that the period of a contractual assessment does not exceed the useful life of the project that is the basis of the assessment. *Id.* at § 399.009(a)(8).
- g. Develop procedures for collecting the proposed contractual assessments. *Id.* at § 399.009(a)(16).

4) Based on the above information, what will the application process and eligibility requirements for the program will be?

A local government must:

- a. decide what kinds of qualified projects will be subject to contractual assessments, *id.* at § 399.009(a)(4);
- b. develop quality assurance and anti-fraud measures for the program, *id.* at § 399.009(a)(15); and

- c. decide what marketing and/or participant education services will be provided for the program, *id.* at § 399.009(a)(14). *Id.* at § 399.009(a)(9).

After a local government has answered the questions above, a local government must complete the following tasks to create the program:

1) Publish a report for the proposed program including:

- a. a map showing the boundaries of the proposed region;
- b. a form contract between the local government and the property owner specifying the terms of assessment under the program; and the terms of financing provided;
- c. 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;
- d. a description of types of qualified projects that may be subject to contractual assessments;
- e. a statement identifying a local government official authorized to enter into written contracts on behalf of the local government;
- f. a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;
- g. if bonds will be issued to provide capital to finance qualified projects as part of the program:
 - i. the maximum aggregate dollar amount for financing through contractual assessments to be provided by the local government;
 - ii. a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum authorized amount
 - iii. a method for determining: the interest rate and period during which contracting owners would pay an assessment; and
 - iv. a method for determining the maximum amount of an assessment;
- h. a method for ensuring that the period of the contractual assessment does not exceed the useful life of the project that is the basis for the assessment;
- i. a description of the application process and eligibility requirements for financing qualified projects;
- j. a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations;

- k. a statement explaining the manner in which property will be assessed and assessments will be collected;
- l. a statement explaining that a property owner must obtain written consent from the holder of a mortgage lien, if applicable before, before participating in a PACE program, *see id.* at § 399.010;
- m. a statement explaining that a review of baseline water or energy conditions and projected water or energy savings is required for each project, as well as verification that the qualified project was completed as intended (any review must be conducted by an independent third party), *see id.* at § 399.011;
- n. a description of the marketing and participant education services to be provided for the program;
- o. a description of the quality-assurance and anti-fraud measures to be instituted for the program; and
- p. the procedures for collecting the contractual assessments. *Id.* at § 399.009(a).

2) Make the report available for public inspection:

- a. on the local government's website; and
- b. at the office of the official designated to enter into written contracts on behalf of the local government. *Id.* at 399.009(c).

3) Adopt a resolution of intent to create a program.

Include:

- a. a finding, if appropriate, that financed projects will serve a valid public purpose;
- b. a statement that the local government intends to make contractual assessments to repay financing;
- c. a description of the types of qualified projects;
- d. a description of the boundaries of the region;
- e. a description of any proposed arrangements for third-party financing;
- f. a description of local government debt servicing procedures if the program uses third-party financing;
- g. a reference to the report for the proposed program 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 local official and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property. *Id.* at § 399.008(a)(1).

4) Hold a public hearing at which the public may comment on the proposed program, including the report for the proposed program. *Id.* at § 399.008(a)(2).

- a. If two or more local governments implement a program jointly, a single public hearing is sufficient to satisfy this requirement. *Id.* at § 399.017(b).

5) Adopt a resolution establishing the program and the terms of the program that includes:

- a. each item included in the report for the proposed program—this resolution may incorporate the report, or the amended version of the report, by reference, *id.* at § 399.008(b); and
- b. a description of each aspect of the program that may be amended only after another public hearing is held. *Id.* at § 399.008(a)(3).