

By: Parker

H.B. No. 1543

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain procedural requirements for public improvement
3 districts and transfers of property located in public improvement
4 districts.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 372.010(a) and (b), Local Government
7 Code, are amended to read as follows:

8 (a) During the six-month period after the date of the final
9 adjournment of the hearing under Section 372.009, the governing
10 body of the municipality or county may authorize an improvement
11 district if, by majority vote of all members of the governing body,
12 the members adopt a resolution authorizing the district in
13 accordance with its finding as to the advisability of the
14 improvement. Except for a resolution authorizing a district
15 described by Section 372.0035, the resolution must provide that the
16 authorization takes effect on the date the resolution is adopted.

17 (b) Not later than the seventh day after the date the
18 governing body of a municipality or county adopts a resolution
19 under Subsection (a), the municipality or county shall file a copy
20 of the resolution with the county clerk of each county in which all
21 or part of the improvement district is located ~~[An authorization~~
22 ~~takes effect when it has been published one time in a newspaper of~~
23 ~~general circulation in the municipality or county. If any part of~~
24 ~~the improvement district is located in the municipality's~~

1 ~~extraterritorial jurisdiction or if any part of the improvements is~~
2 ~~to be undertaken in the municipality's extraterritorial~~
3 ~~jurisdiction, the authorization does not take effect until the~~
4 ~~notice is also given one time in a newspaper of general circulation~~
5 ~~in the part of the extraterritorial jurisdiction in which the~~
6 ~~district is located or in which the improvements are to be~~
7 ~~undertaken].~~

8 SECTION 2. Section 372.013, Local Government Code, is
9 amended to read as follows:

10 Sec. 372.013. SERVICE PLAN. (a) The advisory body shall
11 prepare an ongoing service plan and present the plan to the
12 governing body of the municipality or county for review and
13 approval. The governing body may approve the plan only by ordinance
14 or order. The governing body may assign responsibility for the plan
15 to another entity in the absence of an advisory body.

16 (b) The service plan must:

17 (1) cover a period of at least five years;

18 (2) [and must also] define the annual indebtedness and
19 the projected costs for improvements; and

20 (3) include a copy of the notice form required by
21 Section 5.014, Property Code.

22 (c) Not later than the seventh day after the date the
23 governing body of a municipality or county approves a service plan,
24 the municipality or county shall file a copy of the plan with the
25 county clerk of each county in which all or part of the public
26 improvement district is located.

27 (d) The governing body of the municipality or county [plan]

1 shall review and update the service plan [~~be reviewed and updated~~]
2 annually for the purpose of determining the annual budget for
3 improvements. Except for the service plan for a district described
4 by Section 372.0035, the governing body may amend or update the plan
5 only by ordinance or order.

6 (e) Not later than the seventh day after the date the
7 governing body of a municipality or county amends or updates the
8 service plan, including the notice form required by Section 5.014,
9 Property Code, the municipality or county shall file a copy of the
10 amended or updated plan with the county clerk of each county in
11 which all or part of the public improvement district is located.

12 SECTION 3. Section 5.014, Property Code, is amended to read
13 as follows:

14 Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC
15 IMPROVEMENT DISTRICT. (a) A person who proposes to sell or
16 otherwise convey [~~A seller of residential~~] real property that is
17 located in a public improvement district established under
18 Subchapter A, Chapter 372, Local Government Code, or Chapter 382,
19 Local Government Code, [~~and that consists of not more than one~~
20 ~~dwelling unit located in this state~~] shall first give to the
21 purchaser of the property the [~~a~~] written notice prescribed by
22 Subsection (a-1) or (a-2), as applicable.

23 (a-1) Except for the notice prescribed by Subsection (a-2),
24 the notice required by Subsection (a) shall be executed by the
25 seller and must, except as provided by Subsection (b), read as
26 follows [~~that reads substantially similar to the following~~]:

27 NOTICE OF OBLIGATION TO PAY [~~PUBLIC~~] IMPROVEMENT DISTRICT

1 ASSESSMENT TO (insert name of municipality or county levying
2 assessment), TEXAS

3 CONCERNING THE FOLLOWING PROPERTY [~~AT~~]
4 (insert property [~~street~~] address)

5 As the [~~a~~] purchaser of the [~~this parcel of~~] real property
6 described above, you are obligated to pay assessments [~~an~~
7 ~~assessment~~] to (insert name of [~~a~~] municipality or county, as
8 applicable), Texas, for the costs of a portion of a public [~~an~~]
9 improvement or services project (the "Authorized Improvements")
10 undertaken for the benefit of the property within (insert name of
11 public improvement district) (the "District") created [~~by a public~~
12 ~~improvement district~~] under (insert Subchapter A, Chapter 372,
13 Local Government Code, or Chapter 382, Local Government Code, as
14 applicable).

15 AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE
16 AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF
17 THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN
18 ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON
19 THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE
20 COSTS, AND DELINQUENCY COSTS.

21 The exact amount of the assessment may be obtained from
22 (insert name of municipality or county, as applicable). The exact
23 amount of each annual installment will be approved each year by
24 (insert name of city council or county commissioners court, as
25 applicable) in the annual service plan update for the district [~~The~~
26 ~~assessment may be due annually or in periodic installments~~]. More
27 information about the assessments, including [~~concerning~~] the

1 amounts [~~amount of the assessment~~] and [~~the~~] due dates, [~~of that~~
2 ~~assessment~~] may be obtained from (insert name of [the] municipality
3 or county, as applicable) [~~levying the assessment~~].

4 [~~The amount of the assessments is subject to change.~~] Your
5 failure to pay any assessment or any annual installment may [~~the~~
6 ~~assessments could~~] result in penalties and interest being added to
7 what you owe or in a lien on and the foreclosure of your property.

8 The undersigned purchaser acknowledges receipt of this
9 notice before the effective date of a binding contract for the
10 purchase of the real property at the address described above.

11 Date: _____

12 Signature of Purchaser

13 (a-2) For a district described by Section 372.0035, Local
14 Government Code, the notice required by Subsection (a) shall be
15 executed by the seller and must, except as provided by Subsection
16 (b), read as follows:

17 NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO
18 (insert name of municipality levying assessment), TEXAS
19 CONCERNING THE FOLLOWING HOTEL PROPERTY
20 (insert property address)

21 As the purchaser of the real property described above, you
22 are obligated to pay assessments to (insert name of municipality),
23 Texas, for the costs of a portion of a public improvement or
24 services project (the "Authorized Services") undertaken for the
25 benefit of the property within (insert name of public improvement
26 district) (the "District") created under Subchapter A, Chapter 372,
27 Local Government Code.

1 AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE
2 AUTHORIZED SERVICES, WHICH MUST BE PAID IN FULL WITH EVERY PAYMENT
3 BY THE HOTEL OF LOCAL HOTEL OCCUPANCY TAX REMITTANCES TO THE
4 MUNICIPALITY. YOUR FAILURE TO PAY THE ASSESSMENT MAY RESULT IN
5 PENALTIES AND INTEREST BEING ADDED TO WHAT YOU OWE, AND MAY INCLUDE
6 THE PURSUIT OF ANY OTHER REMEDY THAT IS AUTHORIZED UNDER SECTION
7 372.0035(d), LOCAL GOVERNMENT CODE.

8 Information about the calculation of the assessment may be
9 obtained from (insert name of the municipality). The exact
10 assessment rate will be approved each year by (insert name of city
11 council) in the annual service plan update for the district. More
12 information about the assessments, including the assessment rate
13 and due dates, may be obtained from (insert name of municipality).

14 The undersigned purchaser acknowledges receipt of this
15 notice before the effective date of a binding contract for the
16 purchase of the real property at the address described above.

17 Date: _____

18 Signature of Purchaser

19 (b) The seller or the municipality or county that created
20 the public improvement district may provide additional information
21 regarding the district in the notice prescribed by Subsection (a-1)
22 or (a-2), including whether an assessment has been levied, the
23 amount of the assessment, and the payment schedule for assessments.

24 ~~[The seller shall deliver the notice required under Subsection (a)~~
25 ~~to the purchaser before the effective date of an executory contract~~
26 ~~binding the purchaser to purchase the property. The notice may be~~
27 ~~given separately, as part of the contract during negotiations, or~~

1 ~~as part of any other notice the seller delivers to the purchaser.~~
2 ~~If the notice is included as part of the executory contract or~~
3 ~~another notice, the title of the notice prescribed by this section,~~
4 ~~the references to the street address and date in the notice, and the~~
5 ~~purchaser's signature on the notice may be omitted.]~~

6 (c) This section does not apply to a transfer:

7 (1) under a court order or foreclosure sale;

8 (2) by a trustee in bankruptcy;

9 (3) to a mortgagee by a mortgagor or successor in
10 interest or to a beneficiary of a deed of trust by a trustor or
11 successor in interest;

12 (4) by a mortgagee or a beneficiary under a deed of
13 trust who has acquired the land at a sale conducted under a power of
14 sale under a deed of trust or a sale under a court-ordered
15 foreclosure or has acquired the land by a deed in lieu of
16 foreclosure;

17 (5) by a fiduciary in the course of the administration
18 of a decedent's estate, guardianship, conservatorship, or trust;

19 (6) from one co-owner to another co-owner of an
20 undivided interest in the real property;

21 (7) to a spouse or a person in the lineal line of
22 consanguinity of the seller;

23 (8) to or from a governmental entity; or

24 (9) of only a mineral interest, leasehold interest, or
25 security interest [~~or~~

26 [~~(10) of a real property interest in a condominium~~].

27 (d) For the purposes of this section, a [~~If an executory~~]

1 contract for the purchase and sale of real property having a
2 performance period of less than six months is considered a sale
3 requiring notice [~~is entered into without the seller providing the~~
4 ~~notice required by this section, the purchaser may terminate the~~
5 ~~contract for any reason not later than the earlier of:~~

6 ~~(1) the seventh day after the date the purchaser~~
7 ~~receives the notice; or~~

8 ~~(2) the date the transfer occurs as provided by the~~
9 ~~executory contract].~~

10 ~~[(c) The purchaser's right to terminate the executory~~
11 ~~contract under Subsection (d) is the purchaser's exclusive remedy~~
12 ~~for the seller's failure to provide the notice required by this~~
13 ~~section.]~~

14 SECTION 4. Subchapter A, Chapter 5, Property Code, is
15 amended by adding Sections 5.0141, 5.0142, 5.0143, 5.0144, and
16 5.0145 to read as follows:

17 Sec. 5.0141. NOTICE REQUIRED BEFORE CONTRACT EXECUTION.

18 (a) The notice required by Section 5.014 shall be given to the
19 prospective purchaser before the execution of a binding contract of
20 purchase and sale, either separately or as an addendum or paragraph
21 of a purchase contract.

22 (b) In the event a contract of purchase and sale is entered
23 into without the seller providing the notice, the purchaser is
24 entitled to terminate the contract.

25 (c) If, however, the seller furnishes the notice at or
26 before closing the purchase and sale contract and the purchaser
27 elects to close even though the notice was not timely furnished

1 before execution of the contract, it shall be conclusively presumed
2 that the purchaser has waived all rights to terminate the contract
3 under Subsection (b) or recover damages or other remedies or rights
4 under Section 5.0145.

5 (d) Notwithstanding any provision of this section, Section
6 5.014, 5.0142, 5.0143, 5.0144, or 5.0145, all sellers, title
7 companies, real estate brokers, and examining attorneys, and any
8 agent, representative, or person acting on their behalf, are not
9 liable for damages under Section 5.0145, or for any other damages to
10 any person, for:

11 (1) failing to provide the notice to a purchaser
12 before execution of a binding contract of purchase and sale or at or
13 before the closing of the purchase and sale contract when the
14 municipality or county has not filed the service plan as required by
15 Section 372.013, Local Government Code; or

16 (2) unintentionally providing a notice that is not the
17 correct notice under the circumstances before execution of a
18 binding contract of purchase and sale, or at or before the closing
19 of the purchase and sale contract.

20 Sec. 5.0142. PURCHASER SIGNATURE REQUIRED. The purchaser
21 shall sign the notice required by Section 5.014 or the purchase
22 contract including the notice to evidence the receipt of notice.

23 Sec. 5.0143. RECORDING OF NOTICE AT CLOSING. At the closing
24 of purchase and sale, a separate copy of the notice required by
25 Section 5.014 with current information shall be executed by the
26 seller and purchaser, acknowledged, and recorded in the deed
27 records of the county in which the property is located.

1 Sec. 5.0144. RELIANCE ON FILED SERVICE PLAN. (a) For the
2 purposes of the notice required by Section 5.014, all sellers,
3 title companies, real estate brokers, and examining attorneys, and
4 any agent, representative, or person acting on their behalf, are
5 entitled to rely on the accuracy of the service plan as last filed
6 by each municipality or county under Section 372.013, Local
7 Government Code, in completing the notice form to be executed by the
8 seller and purchaser at the closing of purchase and sale.

9 (b) Any information taken from the service plan as last
10 filed by the municipality or county and the information contained
11 in or shown on the notice form contained in the service plan under
12 Section 372.013, Local Government Code, not including information
13 provided as to the assessments or annual installment amounts as
14 authorized by Section 5.014(b), shall be, for purposes of the
15 notice required by Section 5.014, conclusively presumed as a matter
16 of law to be correct.

17 (c) All subsequent sellers, purchasers, title insurance
18 companies, real estate brokers, examining attorneys, and
19 lienholders are entitled to rely on the service plan filed by the
20 municipality or county, including the notice form contained in the
21 service plan, under Section 372.013, Local Government Code.

22 (d) If the notice required by Section 5.014 is given at
23 closing as provided by Section 5.0141(c), a purchaser, or the
24 purchaser's heirs, successors, or assigns, are not entitled to
25 maintain an action for damages against a seller, title insurance
26 company, real estate broker, or lienholder, or any agent,
27 representative, or person acting on their behalf, because the

1 seller:

2 (1) used the notice form included in the service plan
3 filed by the municipality or county under Section 372.013, Local
4 Government Code; or

5 (2) relied on the filed legal description of the
6 public improvement district in determining whether the property is
7 located in the district.

8 (e) No action may be maintained against any title company
9 for failure to disclose the inclusion of the property in a public
10 improvement district when the municipality or county has not filed
11 the service plan under Section 372.013, Local Government Code, with
12 the clerk of each county in which the district is located.

13 (f) All sellers, title insurance companies, examining
14 attorneys, vendors of property and tax information, real estate
15 brokers, and lienholders, and any agent, representative, or person
16 acting on their behalf, are entitled to rely on the accuracy of:

17 (1) the service plan last filed by the municipality or
18 county or the information in the notice form filed by the district
19 under Section 372.013, Local Government Code; or

20 (2) for the purposes of the notice required by Section
21 5.014, the information in the service plan filed by the
22 municipality or county in effect as of January 1 of each year for
23 the period January 1 through December 31 of such calendar year.

24 Sec. 5.0145. SUITS FOR DAMAGES. (a) If any sale or
25 conveyance of real property within a public improvement district is
26 not made in compliance with Section 5.014, 5.0141, 5.0142, or
27 5.0143, the purchaser may institute a suit for damages under the

1 provisions of Subsection (b) or (e).

2 (b) A purchaser of real property whose sale or conveyance is
3 subject to the notice requirement under Section 5.014, if the sale
4 or conveyance of the property is not made in compliance with that
5 section or Section 5.0141, 5.0142, or 5.0143, may institute a suit
6 for damages in the amount of all costs relative to the purchase of
7 the property at the time of purchase, plus interest and reasonable
8 attorney's fees.

9 (c) The suit for damages under Subsection (b) may be
10 instituted jointly or severally against the person, firm,
11 corporation, partnership, organization, business trust, estate,
12 trust, association, or other legal entity that sold or conveyed the
13 property to the purchaser.

14 (d) Following the recovery of damages under Subsection (b),
15 the amount of the damages shall first be paid to satisfy all unpaid
16 obligations on each outstanding lien on the property and the
17 remainder of the damage amount shall be paid to the purchaser. On
18 payment of all damages respectively to the lienholders and
19 purchaser, the purchaser shall reconvey the property to the seller.

20 (e) A purchaser of real property whose sale or conveyance is
21 subject to the notice requirement under Section 5.014, if the sale
22 or conveyance of the property is not made in compliance with that
23 section or Section 5.0141, 5.0142, or 5.0143, may institute a suit
24 for damages in an amount not to exceed \$5,000, plus reasonable
25 attorney's fees.

26 (f) A purchaser is not entitled to recover damages under
27 both Subsections (b) and (e), and entry of a final decision awarding

1 damages to the purchaser under either Subsection (b) or (e) shall
2 preclude the purchaser from recovering damages under the other
3 subsection.

4 (g) The relief provided under Subsections (b) and (e) shall
5 be the exclusive remedies for a purchaser aggrieved by the seller's
6 failure to comply with the provisions of Section 5.014, 5.0141,
7 5.0142, or 5.0143.

8 (h) An action for damages does not apply to, affect, alter,
9 or impair the validity of any existing vendor's lien, mechanic's
10 lien, or deed of trust lien on the property.

11 (i) A suit for damages under this section must be brought
12 not later than the earlier of:

13 (1) the 90th day after the date the purchaser receives
14 the first public improvement district annual assessment
15 installment or tax notice; or

16 (2) the fourth anniversary of the date the property is
17 sold or conveyed to the purchaser.

18 (j) Notwithstanding a provision of this section, a
19 purchaser may not recover damages under this section if the
20 purchaser:

21 (1) purchases an equity in real property and in
22 conjunction with the purchase assumes any liens, whether purchase
23 money or otherwise; and

24 (2) does not require proof of title by abstract, title
25 policy, or any other proof of title.

26 (k) A purchaser who purchases real property in a public
27 improvement district and who then sells or conveys the property

1 shall on closing of the subsequent sale or conveyance be
2 conclusively considered to have waived any prior right to damages
3 under this section.

4 SECTION 5. Section 372.010, Local Government Code, as
5 amended by this Act, applies only to a resolution adopted under that
6 section on or after the effective date of this Act. A resolution
7 adopted before the effective date of this Act is governed by the law
8 in effect on the date the resolution was adopted, and the former law
9 is continued in effect for that purpose.

10 SECTION 6. Sections 372.013(a) and (b), Local Government
11 Code, as amended by this Act, and Section 372.013(c), Local
12 Government Code, as added by this Act, apply only to a service plan
13 approved under that section on or after the effective date of this
14 Act. A service plan approved before the effective date of this Act
15 is governed by the law in effect on the date the service plan was
16 approved, and the former law is continued in effect for that
17 purpose.

18 SECTION 7. Sections 372.013(d) and (e), Local Government
19 Code, as added by this Act, apply only to a service plan amended or
20 updated under that section on or after the effective date of this
21 Act.

22 SECTION 8. Section 5.014, Property Code, as amended by this
23 Act, and Sections 5.0141, 5.0142, 5.0143, 5.0144, and 5.0145,
24 Property Code, as added by this Act, apply only to a sale or
25 conveyance of property for which a binding contract is executed on
26 or after the effective date of this Act. A sale or conveyance for
27 which a binding contract is executed before the effective date of

1 this Act is governed by the law in effect on the date the contract is
2 executed, and the former law is continued in effect for that
3 purpose.

4 SECTION 9. This Act takes effect September 1, 2021.