

1-1 By: Parker (Senate Sponsor - Creighton) H.B. No. 1543
 1-2 (In the Senate - Received from the House April 19, 2021;
 1-3 May 4, 2021, read first time and referred to Committee on Local
 1-4 Government; May 13, 2021, reported favorably by the following
 1-5 vote: Yeas 9, Nays 0; May 13, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain procedural requirements for public improvement
 1-20 districts and transfers of property located in public improvement
 1-21 districts.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Sections 372.010(a) and (b), Local Government
 1-24 Code, are amended to read as follows:

1-25 (a) During the six-month period after the date of the final
 1-26 adjournment of the hearing under Section 372.009, the governing
 1-27 body of the municipality or county may authorize an improvement
 1-28 district if, by majority vote of all members of the governing body,
 1-29 the members adopt a resolution authorizing the district in
 1-30 accordance with its finding as to the advisability of the
 1-31 improvement. Except for a resolution authorizing a district
 1-32 described by Section 372.0035, the resolution must provide that the
 1-33 authorization takes effect on the date the resolution is adopted.

1-34 (b) Not later than the seventh day after the date the
 1-35 governing body of a municipality or county adopts a resolution
 1-36 under Subsection (a), the municipality or county shall file a copy
 1-37 of the resolution with the county clerk of each county in which all
 1-38 or part of the improvement district is located [An authorization
 1-39 takes effect when it has been published one time in a newspaper of
 1-40 general circulation in the municipality or county. If any part of
 1-41 the improvement district is located in the municipality's
 1-42 extraterritorial jurisdiction or if any part of the improvements is
 1-43 to be undertaken in the municipality's extraterritorial
 1-44 jurisdiction, the authorization does not take effect until the
 1-45 notice is also given one time in a newspaper of general circulation
 1-46 in the part of the extraterritorial jurisdiction in which the
 1-47 district is located or in which the improvements are to be
 1-48 undertaken].

1-49 SECTION 2. Section 372.013, Local Government Code, is
 1-50 amended to read as follows:

1-51 Sec. 372.013. SERVICE PLAN. (a) The advisory body shall
 1-52 prepare an ongoing service plan and present the plan to the
 1-53 governing body of the municipality or county for review and
 1-54 approval. The governing body may approve the plan only by ordinance
 1-55 or order. The governing body may assign responsibility for the plan
 1-56 to another entity in the absence of an advisory body.

1-57 (b) The service plan must:

- 1-58 (1) cover a period of at least five years;
- 1-59 (2) [and must also] define the annual indebtedness and
 1-60 the projected costs for improvements; and
- 1-61 (3) include a copy of the notice form required by

2-1 Section 5.014, Property Code.

2-2 (c) Not later than the seventh day after the date the
2-3 governing body of a municipality or county approves a service plan,
2-4 the municipality or county shall file a copy of the plan with the
2-5 county clerk of each county in which all or part of the public
2-6 improvement district is located.

2-7 (d) The governing body of the municipality or county [~~plan~~]
2-8 shall review and update the service plan [~~be reviewed and updated~~]
2-9 annually for the purpose of determining the annual budget for
2-10 improvements. Except for the service plan for a district described
2-11 by Section 372.0035, the governing body may amend or update the plan
2-12 only by ordinance or order.

2-13 (e) Not later than the seventh day after the date the
2-14 governing body of a municipality or county amends or updates the
2-15 service plan, including the notice form required by Section 5.014,
2-16 Property Code, the municipality or county shall file a copy of the
2-17 amended or updated plan with the county clerk of each county in
2-18 which all or part of the public improvement district is located.

2-19 SECTION 3. Section 5.014, Property Code, is amended to read
2-20 as follows:

2-21 Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC
2-22 IMPROVEMENT DISTRICT. (a) A person who proposes to sell or
2-23 otherwise convey [~~A seller of residential~~] real property that is
2-24 located in a public improvement district established under
2-25 Subchapter A, Chapter 372, Local Government Code, or Chapter 382,
2-26 Local Government Code, [~~and that consists of not more than one~~
2-27 ~~dwelling unit located in this state~~] shall first give to the
2-28 purchaser of the property the [~~a~~] written notice prescribed by
2-29 Subsection (a-1) or (a-2), as applicable.

2-30 (a-1) Except for the notice prescribed by Subsection (a-2),
2-31 the notice required by Subsection (a) shall be executed by the
2-32 seller and must, except as provided by Subsection (b), read as
2-33 follows [~~that reads substantially similar to the following~~]:

2-34 NOTICE OF OBLIGATION TO PAY [~~PUBLIC~~] IMPROVEMENT DISTRICT
2-35 ASSESSMENT TO (insert name of municipality or county levying
2-36 assessment), TEXAS

2-37 CONCERNING THE FOLLOWING PROPERTY [~~AT~~]
2-38 (insert property [~~street~~] address)

2-39 As the [~~a~~] purchaser of the [~~this parcel of~~] real property
2-40 described above, you are obligated to pay assessments [~~an~~
2-41 ~~assessment~~] to (insert name of [~~a~~] municipality or county, as
2-42 applicable), Texas, for the costs of a portion of a public [~~an~~]
2-43 improvement or services project (the "Authorized Improvements")
2-44 undertaken for the benefit of the property within (insert name of
2-45 public improvement district) (the "District") created [~~by a public~~
2-46 improvement district] under (insert Subchapter A, Chapter 372,
2-47 Local Government Code, or Chapter 382, Local Government Code, as
2-48 applicable).

2-49 AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE
2-50 AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF
2-51 THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN
2-52 ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON
2-53 THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE
2-54 COSTS, AND DELINQUENCY COSTS.

2-55 The exact amount of the assessment may be obtained from
2-56 (insert name of municipality or county, as applicable). The exact
2-57 amount of each annual installment will be approved each year by
2-58 (insert name of city council or county commissioners court, as
2-59 applicable) in the annual service plan update for the district [~~The~~
2-60 ~~assessment may be due annually or in periodic installments~~]. More
2-61 information about the assessments, including [~~concerning~~] the
2-62 amounts [~~amount of the assessment~~] and [~~the~~] due dates, [~~of that~~
2-63 ~~assessment~~] may be obtained from (insert name of [~~the~~] municipality
2-64 or county, as applicable) [~~levying the assessment~~].

2-65 [~~The amount of the assessments is subject to change.~~] Your
2-66 failure to pay any assessment or any annual installment may [~~the~~
2-67 ~~assessments could~~] result in penalties and interest being added to
2-68 what you owe or in a lien on and the foreclosure of your property.

2-69 The undersigned purchaser acknowledges receipt of this

3-1 notice before the effective date of a binding contract for the
3-2 purchase of the real property at the address described above.

3-3 Date: _____

3-4 Signature of Purchaser

3-5 (a-2) For a district described by Section 372.0035, Local
3-6 Government Code, the notice required by Subsection (a) shall be
3-7 executed by the seller and must, except as provided by Subsection
3-8 (b), read as follows:

3-9 NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO
3-10 (insert name of municipality levying assessment), TEXAS
3-11 CONCERNING THE FOLLOWING HOTEL PROPERTY
3-12 (insert property address)

3-13 As the purchaser of the real property described above, you
3-14 are obligated to pay assessments to (insert name of municipality),
3-15 Texas, for the costs of a portion of a public improvement or
3-16 services project (the "Authorized Services") undertaken for the
3-17 benefit of the property within (insert name of public improvement
3-18 district) (the "District") created under Subchapter A, Chapter 372,
3-19 Local Government Code.

3-20 AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE
3-21 AUTHORIZED SERVICES, WHICH MUST BE PAID IN FULL WITH EVERY PAYMENT
3-22 BY THE HOTEL OF LOCAL HOTEL OCCUPANCY TAX REMITTANCES TO THE
3-23 MUNICIPALITY. YOUR FAILURE TO PAY THE ASSESSMENT MAY RESULT IN
3-24 PENALTIES AND INTEREST BEING ADDED TO WHAT YOU OWE, AND MAY INCLUDE
3-25 THE PURSUIT OF ANY OTHER REMEDY THAT IS AUTHORIZED UNDER SECTION
3-26 372.0035(d), LOCAL GOVERNMENT CODE.

3-27 Information about the calculation of the assessment may be
3-28 obtained from (insert name of the municipality). The exact
3-29 assessment rate will be approved each year by (insert name of city
3-30 council) in the annual service plan update for the district. More
3-31 information about the assessments, including the assessment rate
3-32 and due dates, may be obtained from (insert name of municipality).

3-33 The undersigned purchaser acknowledges receipt of this
3-34 notice before the effective date of a binding contract for the
3-35 purchase of the real property at the address described above.

3-36 Date: _____

3-37 Signature of Purchaser

3-38 (b) The seller or the municipality or county that created
3-39 the public improvement district may provide additional information
3-40 regarding the district in the notice prescribed by Subsection (a-1)
3-41 or (a-2), including whether an assessment has been levied, the
3-42 amount of the assessment, and the payment schedule for assessments.
3-43 [The seller shall deliver the notice required under Subsection (a)
3-44 to the purchaser before the effective date of an executory contract
3-45 binding the purchaser to purchase the property. The notice may be
3-46 given separately, as part of the contract during negotiations, or
3-47 as part of any other notice the seller delivers to the purchaser.
3-48 If the notice is included as part of the executory contract or
3-49 another notice, the title of the notice prescribed by this section,
3-50 the references to the street address and date in the notice, and the
3-51 purchaser's signature on the notice may be omitted.]

3-52 (c) This section does not apply to a transfer:
3-53 (1) under a court order or foreclosure sale;
3-54 (2) by a trustee in bankruptcy;
3-55 (3) to a mortgagee by a mortgagor or successor in
3-56 interest or to a beneficiary of a deed of trust by a trustor or
3-57 successor in interest;
3-58 (4) by a mortgagee or a beneficiary under a deed of
3-59 trust who has acquired the land at a sale conducted under a power of
3-60 sale under a deed of trust or a sale under a court-ordered
3-61 foreclosure or has acquired the land by a deed in lieu of
3-62 foreclosure;
3-63 (5) by a fiduciary in the course of the administration
3-64 of a decedent's estate, guardianship, conservatorship, or trust;
3-65 (6) from one co-owner to another co-owner of an
3-66 undivided interest in the real property;
3-67 (7) to a spouse or a person in the lineal line of
3-68 consanguinity of the seller;
3-69 (8) to or from a governmental entity; or

4-1 (9) of only a mineral interest, leasehold interest, or
 4-2 security interest~~[, or~~
 4-3 ~~[(10) of a real property interest in a condominium].~~

4-4 (d) For the purposes of this section, a [If an executory]
 4-5 contract for the purchase and sale of real property having a
 4-6 performance period of less than six months is considered a sale
 4-7 requiring notice [is entered into without the seller providing the
 4-8 notice required by this section, the purchaser may terminate the
 4-9 contract for any reason not later than the earlier of:

4-10 [(1) the seventh day after the date the purchaser
 4-11 receives the notice; or

4-12 [(2) the date the transfer occurs as provided by the
 4-13 executory contract].

4-14 [(e) The purchaser's right to terminate the executory
 4-15 contract under Subsection (d) is the purchaser's exclusive remedy
 4-16 for the seller's failure to provide the notice required by this
 4-17 section.]

4-18 SECTION 4. Subchapter A, Chapter 5, Property Code, is
 4-19 amended by adding Sections 5.0141, 5.0142, 5.0143, 5.0144, and
 4-20 5.0145 to read as follows:

4-21 Sec. 5.0141. NOTICE REQUIRED BEFORE CONTRACT EXECUTION.

4-22 (a) The notice required by Section 5.014 shall be given to the
 4-23 prospective purchaser before the execution of a binding contract of
 4-24 purchase and sale, either separately or as an addendum or paragraph
 4-25 of a purchase contract.

4-26 (b) In the event a contract of purchase and sale is entered
 4-27 into without the seller providing the notice, the purchaser is
 4-28 entitled to terminate the contract.

4-29 (c) If, however, the seller furnishes the notice at or
 4-30 before closing the purchase and sale contract and the purchaser
 4-31 elects to close even though the notice was not timely furnished
 4-32 before execution of the contract, it shall be conclusively presumed
 4-33 that the purchaser has waived all rights to terminate the contract
 4-34 under Subsection (b) or recover damages or other remedies or rights
 4-35 under Section 5.0145.

4-36 (d) Notwithstanding any provision of this section, Section
 4-37 5.014, 5.0142, 5.0143, 5.0144, or 5.0145, all sellers, title
 4-38 companies, real estate brokers, and examining attorneys, and any
 4-39 agent, representative, or person acting on their behalf, are not
 4-40 liable for damages under Section 5.0145, or for any other damages to
 4-41 any person, for:

4-42 (1) failing to provide the notice to a purchaser
 4-43 before execution of a binding contract of purchase and sale or at or
 4-44 before the closing of the purchase and sale contract when the
 4-45 municipality or county has not filed the service plan as required by
 4-46 Section 372.013, Local Government Code; or

4-47 (2) unintentionally providing a notice that is not the
 4-48 correct notice under the circumstances before execution of a
 4-49 binding contract of purchase and sale, or at or before the closing
 4-50 of the purchase and sale contract.

4-51 Sec. 5.0142. PURCHASER SIGNATURE REQUIRED. The purchaser
 4-52 shall sign the notice required by Section 5.014 or the purchase
 4-53 contract including the notice to evidence the receipt of notice.

4-54 Sec. 5.0143. RECORDING OF NOTICE AT CLOSING. At the closing
 4-55 of purchase and sale, a separate copy of the notice required by
 4-56 Section 5.014 with current information shall be executed by the
 4-57 seller and purchaser, acknowledged, and recorded in the deed
 4-58 records of the county in which the property is located.

4-59 Sec. 5.0144. RELIANCE ON FILED SERVICE PLAN. (a) For the
 4-60 purposes of the notice required by Section 5.014, all sellers,
 4-61 title companies, real estate brokers, and examining attorneys, and
 4-62 any agent, representative, or person acting on their behalf, are
 4-63 entitled to rely on the accuracy of the service plan as last filed
 4-64 by each municipality or county under Section 372.013, Local
 4-65 Government Code, in completing the notice form to be executed by the
 4-66 seller and purchaser at the closing of purchase and sale.

4-67 (b) Any information taken from the service plan as last
 4-68 filed by the municipality or county and the information contained
 4-69 in or shown on the notice form contained in the service plan under

5-1 Section 372.013, Local Government Code, not including information
 5-2 provided as to the assessments or annual installment amounts as
 5-3 authorized by Section 5.014(b), shall be, for purposes of the
 5-4 notice required by Section 5.014, conclusively presumed as a matter
 5-5 of law to be correct.

5-6 (c) All subsequent sellers, purchasers, title insurance
 5-7 companies, real estate brokers, examining attorneys, and
 5-8 lienholders are entitled to rely on the service plan filed by the
 5-9 municipality or county, including the notice form contained in the
 5-10 service plan, under Section 372.013, Local Government Code.

5-11 (d) If the notice required by Section 5.014 is given at
 5-12 closing as provided by Section 5.0141(c), a purchaser, or the
 5-13 purchaser's heirs, successors, or assigns, are not entitled to
 5-14 maintain an action for damages against a seller, title insurance
 5-15 company, real estate broker, or lienholder, or any agent,
 5-16 representative, or person acting on their behalf, because the
 5-17 seller:

5-18 (1) used the notice form included in the service plan
 5-19 filed by the municipality or county under Section 372.013, Local
 5-20 Government Code; or

5-21 (2) relied on the filed legal description of the
 5-22 public improvement district in determining whether the property is
 5-23 located in the district.

5-24 (e) No action may be maintained against any title company
 5-25 for failure to disclose the inclusion of the property in a public
 5-26 improvement district when the municipality or county has not filed
 5-27 the service plan under Section 372.013, Local Government Code, with
 5-28 the clerk of each county in which the district is located.

5-29 (f) All sellers, title insurance companies, examining
 5-30 attorneys, vendors of property and tax information, real estate
 5-31 brokers, and lienholders, and any agent, representative, or person
 5-32 acting on their behalf, are entitled to rely on the accuracy of:

5-33 (1) the service plan last filed by the municipality or
 5-34 county or the information in the notice form filed by the district
 5-35 under Section 372.013, Local Government Code; or

5-36 (2) for the purposes of the notice required by Section
 5-37 5.014, the information in the service plan filed by the
 5-38 municipality or county in effect as of January 1 of each year for
 5-39 the period January 1 through December 31 of such calendar year.

5-40 Sec. 5.0145. SUITS FOR DAMAGES. (a) If any sale or
 5-41 conveyance of real property within a public improvement district is
 5-42 not made in compliance with Section 5.014, 5.0141, 5.0142, or
 5-43 5.0143, the purchaser may institute a suit for damages under the
 5-44 provisions of Subsection (b) or (e).

5-45 (b) A purchaser of real property whose sale or conveyance is
 5-46 subject to the notice requirement under Section 5.014, if the sale
 5-47 or conveyance of the property is not made in compliance with that
 5-48 section or Section 5.0141, 5.0142, or 5.0143, may institute a suit
 5-49 for damages in the amount of all costs relative to the purchase of
 5-50 the property at the time of purchase, plus interest and reasonable
 5-51 attorney's fees.

5-52 (c) The suit for damages under Subsection (b) may be
 5-53 instituted jointly or severally against the person, firm,
 5-54 corporation, partnership, organization, business trust, estate,
 5-55 trust, association, or other legal entity that sold or conveyed the
 5-56 property to the purchaser.

5-57 (d) Following the recovery of damages under Subsection (b),
 5-58 the amount of the damages shall first be paid to satisfy all unpaid
 5-59 obligations on each outstanding lien on the property and the
 5-60 remainder of the damage amount shall be paid to the purchaser. On
 5-61 payment of all damages respectively to the lienholders and
 5-62 purchaser, the purchaser shall reconvey the property to the seller.

5-63 (e) A purchaser of real property whose sale or conveyance is
 5-64 subject to the notice requirement under Section 5.014, if the sale
 5-65 or conveyance of the property is not made in compliance with that
 5-66 section or Section 5.0141, 5.0142, or 5.0143, may institute a suit
 5-67 for damages in an amount not to exceed \$5,000, plus reasonable
 5-68 attorney's fees.

5-69 (f) A purchaser is not entitled to recover damages under

6-1 both Subsections (b) and (e), and entry of a final decision awarding
6-2 damages to the purchaser under either Subsection (b) or (e) shall
6-3 preclude the purchaser from recovering damages under the other
6-4 subsection.

6-5 (g) The relief provided under Subsections (b) and (e) shall
6-6 be the exclusive remedies for a purchaser aggrieved by the seller's
6-7 failure to comply with the provisions of Section 5.014, 5.0141,
6-8 5.0142, or 5.0143.

6-9 (h) An action for damages does not apply to, affect, alter,
6-10 or impair the validity of any existing vendor's lien, mechanic's
6-11 lien, or deed of trust lien on the property.

6-12 (i) A suit for damages under this section must be brought
6-13 not later than the earlier of:

6-14 (1) the 90th day after the date the purchaser receives
6-15 the first public improvement district annual assessment
6-16 installment or tax notice; or

6-17 (2) the fourth anniversary of the date the property is
6-18 sold or conveyed to the purchaser.

6-19 (j) Notwithstanding a provision of this section, a
6-20 purchaser may not recover damages under this section if the
6-21 purchaser:

6-22 (1) purchases an equity in real property and in
6-23 conjunction with the purchase assumes any liens, whether purchase
6-24 money or otherwise; and

6-25 (2) does not require proof of title by abstract, title
6-26 policy, or any other proof of title.

6-27 (k) A purchaser who purchases real property in a public
6-28 improvement district and who then sells or conveys the property
6-29 shall on closing of the subsequent sale or conveyance be
6-30 conclusively considered to have waived any prior right to damages
6-31 under this section.

6-32 SECTION 5. Section 372.010, Local Government Code, as
6-33 amended by this Act, applies only to a resolution adopted under that
6-34 section on or after the effective date of this Act. A resolution
6-35 adopted before the effective date of this Act is governed by the law
6-36 in effect on the date the resolution was adopted, and the former law
6-37 is continued in effect for that purpose.

6-38 SECTION 6. Sections 372.013(a) and (b), Local Government
6-39 Code, as amended by this Act, and Section 372.013(c), Local
6-40 Government Code, as added by this Act, apply only to a service plan
6-41 approved under that section on or after the effective date of this
6-42 Act. A service plan approved before the effective date of this Act
6-43 is governed by the law in effect on the date the service plan was
6-44 approved, and the former law is continued in effect for that
6-45 purpose.

6-46 SECTION 7. Sections 372.013(d) and (e), Local Government
6-47 Code, as added by this Act, apply only to a service plan amended or
6-48 updated under that section on or after the effective date of this
6-49 Act.

6-50 SECTION 8. Section 5.014, Property Code, as amended by this
6-51 Act, and Sections 5.0141, 5.0142, 5.0143, 5.0144, and 5.0145,
6-52 Property Code, as added by this Act, apply only to a sale or
6-53 conveyance of property for which a binding contract is executed on
6-54 or after the effective date of this Act. A sale or conveyance for
6-55 which a binding contract is executed before the effective date of
6-56 this Act is governed by the law in effect on the date the contract is
6-57 executed, and the former law is continued in effect for that
6-58 purpose.

6-59 SECTION 9. This Act takes effect September 1, 2021.

6-60 * * * * *