

By: Bailey

H.B. No. 2181

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to municipal development districts; providing civil and  
3 criminal penalties.

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

5 SECTION 1. (a) Section 377.021, Local Government Code, is  
6 amended by adding Subsection (h) to read as follows:

7 (h) The municipality shall file an order canvassing the  
8 results of the election with the district records and with the  
9 county clerk of each county in which the municipality is located.  
10 The order must describe the district's boundaries. The county  
11 clerk shall record the order.

12 (b) The changes made by this section to Section 377.021,  
13 Local Government Code, apply only to an election that occurs on or  
14 after the effective date of this section. An election that occurs  
15 before the effective date of this section is governed by the law  
16 applicable to the election immediately before the effective date of  
17 this section, and that law is continued in effect for that purpose.

18 SECTION 2. (a) Subchapter B, Chapter 377, Local Government  
19 Code, is amended by adding Section 377.023 to read as follows:

20 Sec. 377.023. POSTING SIGNS IN DISTRICT. (a) Not later  
21 than the 30th day after the date the district is created, the  
22 district shall post signs indicating the district's existence at  
23 two principal entrances to the district.

24 (b) The board shall determine the information on and the

1 size and exact location of the signs.

2 (b) Section 377.023, Local Government Code, as added by this  
3 section, takes effect September 1, 2003.

4 (c) A municipal development district created under Chapter  
5 377, Local Government Code, before the effective date of this  
6 section shall comply with Section 377.023, Local Government Code,  
7 as added by this section, not later than January 1, 2004.

8 SECTION 3. Section 377.053, Local Government Code, is  
9 amended to read as follows:

10 Sec. 377.053. BOARD MEETING PLACES; NOTICE [MEETINGS]. (a)  
11 The board may designate one or more places inside or outside the  
12 district for conducting board meetings.

13 (b) On written request of at least 25 qualified voters who  
14 reside in the district, the board may meet only in the district for  
15 the year after the date on which the board received the request.

16 (c) The board shall give notice of any meeting place outside  
17 the district by filing a resolution establishing the location of  
18 the meeting place with the governing body of the municipality in  
19 which the district is located and by publishing notice of the  
20 location in a newspaper of general circulation in the district. If  
21 the location of a meeting place outside the district changes, the  
22 board shall give notice in the same manner [~~shall conduct its~~  
23 ~~meetings in the municipality in which the district is located~~].

24 SECTION 4. (a) Chapter 377, Local Government Code, is  
25 amended by adding Subchapter F to read as follows:

26 SUBCHAPTER F. AUDIT OF DISTRICT ACCOUNTS AND RECORDS

27 Sec. 377.151. DUTY TO AUDIT. (a) The board shall have the

1 district's fiscal accounts and records audited annually at the  
2 expense of the district.

3 (b) The audit must be performed by a certified public  
4 accountant or public accountant certified or licensed under Chapter  
5 901, Occupations Code.

6 (c) The audit must be completed not later than the 120th day  
7 after the last day of the district's fiscal year.

8 Sec. 377.152. FORM OF AUDIT. The audit shall be performed  
9 according to the generally accepted auditing standards adopted by  
10 the American Institute of Certified Public Accountants as of  
11 January 1, 2003, or later standards adopted by the board under this  
12 section. Financial statements shall be prepared in accordance with  
13 the generally accepted accounting principles adopted by the  
14 American Institute of Certified Public Accountants as of January 1,  
15 2003, or later principles adopted by the board under this section.  
16 The board shall consider later changes to the standards or  
17 principles adopted by the institute and may adopt a standard or  
18 principle if the board considers it reasonable.

19 Sec. 377.153. FINANCIAL REPORTS. (a) Any depository,  
20 treasurer, or bookkeeper who receives or has control over any  
21 district money shall keep a full and itemized account of that money.

22 (b) The depository, treasurer, and bookkeeper shall make  
23 the itemized accounts available for audit.

24 Sec. 377.154. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL  
25 REPORTS. (a) After the board approves the audit and not later than  
26 the 135th day after the last day of the district's fiscal year, the  
27 board shall file a copy of the audit report with the governing body

1 of the municipality in which the district is located and the  
2 comptroller.

3 (b) If the board refuses to approve the audit report, the  
4 board shall file a copy of the report with the governing body of the  
5 municipality in which the district is located and the comptroller  
6 not later than the 135th day after the last day of the district's  
7 fiscal year. The report must be accompanied by a statement from the  
8 board explaining the reasons for its failure to approve the report.

9 (c) A district shall file a copy of each audit report in the  
10 district office.

11 (d) When the audit report is filed with the comptroller  
12 under Subsection (a), the board shall file with the comptroller an  
13 annual filing affidavit in a format prescribed by the comptroller.  
14 The affidavit must be executed by an authorized representative of  
15 the board and must state that all copies of the audit report have  
16 been filed as required by this section.

17 Sec. 377.155. NONCOMPLIANCE; DUTY OF COMPTROLLER. The  
18 comptroller shall file with the attorney general the names of any  
19 districts that do not comply with this subchapter.

20 (b) A municipal development district shall have an annual  
21 audit performed as required by Subchapter F, Chapter 377, Local  
22 Government Code, as added by this section, only for each fiscal year  
23 that begins on or after the effective date of this section.

24 SECTION 5. (a) Chapter 377, Local Government Code, is  
25 amended by adding Subchapter G to read as follows:

26 SUBCHAPTER G. NOTICE OF DISTRICT TO PURCHASERS OF REAL PROPERTY;

27 FILING OF INFORMATION

1       Sec. 377.201. NOTICE TO PURCHASERS. (a) If a person  
2 proposes to sell real property located in a district that is  
3 acquiring or planning to acquire a project that has been financed or  
4 is proposed to be financed with district bonds payable wholly or  
5 partly from district taxes, the person must give to the purchaser  
6 written notice as prescribed by this section. An executory  
7 contract that has a performance period of more than six months is  
8 considered a sale of real property under this section.

9       (b) This section does not apply to a transfer of title:

10           (1) under any type of lien foreclosure;

11           (2) by deed in cancellation of indebtedness secured by  
12 a lien on the property conveyed;

13           (3) by reason of a will or probate proceedings; or

14           (4) to a governmental entity.

15       (c) The notice must be executed by the seller and read:

16       "The real property, described below, that you are about to  
17 purchase is located in the \_\_\_\_\_ District. The district has taxing  
18 authority separate from any other taxing authority and may, subject  
19 to voter approval, issue an unlimited amount of bonds and impose a  
20 sales and use tax in payment of such bonds. As of this date, the  
21 rate of the sales and use tax imposed by the district is \_\_\_\_\_  
22 (one-eighth of one percent, one-fourth of one percent,  
23 three-eighths of one percent, or one-half of one percent, as  
24 applicable). If the district has not yet imposed taxes, the most  
25 recent projected rate of tax, as of this date, is \_\_\_\_\_ (one-eighth  
26 of one percent, one-fourth of one percent, three-eighths of one  
27 percent, or one-half of one percent, as applicable). The total

1 amount of bonds, excluding refunding bonds and any bonds or any  
2 portion of bonds issued that are payable solely from revenues  
3 received or expected to be received under a contract with a  
4 governmental entity, approved by the voters and that have been or  
5 may be issued at this date is \$\_\_\_\_\_, and the aggregate initial  
6 principal amounts of all bonds issued for one or more of the  
7 projects of the district and payable wholly or partly from sales and  
8 use taxes is \$\_\_\_\_\_.

9 "The district is located in the corporate boundaries of  
10 \_\_\_\_\_. The taxpayers of the district are subject to the taxes  
11 imposed by the municipality and by the district until the district  
12 is dissolved.

13 "The purpose of this district is to undertake development  
14 projects beneficial to the district through the issuance of bonds  
15 payable wholly or partly from sales and use taxes. The cost of the  
16 facilities built or maintained for this purpose is not included in  
17 the purchase price of the property you are purchasing, and these  
18 facilities are owned or to be owned by the district. The legal  
19 description of the property you are purchasing is:

20 \_\_\_\_\_(date)

21 \_\_\_\_\_Signature of Seller

22 "PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM  
23 IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT  
24 ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER  
25 THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE  
26 TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO  
27 CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR

1 PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

2 "The undersigned purchaser acknowledges receipt of this  
3 notice at or before the execution of the contract to purchase the  
4 real property described in the notice or at closing of purchase of  
5 the real property.

6 \_\_\_\_\_(date)

7 \_\_\_\_\_Signature of Purchaser

8 "(Note: Correct district name, tax rate, bond amounts, and  
9 legal description are to be placed in the appropriate space.)  
10 Except for notices included as an addendum or paragraph of a  
11 purchase contract, the notice shall be executed by the seller and  
12 purchaser, as indicated. If the district has not yet imposed taxes,  
13 a statement of the district's most recent projected rate of tax is  
14 to be placed in the appropriate space. For the purposes of the  
15 notice form required to be given to the prospective purchaser  
16 before execution of the contract, a seller and any agent,  
17 representative, or person acting on the seller's behalf may modify  
18 the notice by substitution of the words 'January 1, \_\_\_\_' for the  
19 words 'this date' and place the correct calendar year in the  
20 appropriate space."

21 (d) If the law relating to district dissolution is amended  
22 and causes inaccuracies in the content of the notice prescribed by  
23 this section, the district shall revise the content of the notices  
24 to accurately reflect the changes in the law.

25 Sec. 377.202. TIMING OF NOTICE. (a) The notice required by  
26 Section 377.201 must be given to the prospective purchaser before  
27 the execution of the contract. The notice may be given separately

1 or as an addendum or paragraph to the contract.

2 (b) If the seller fails to provide the notice required by  
3 Section 377.201, the purchaser may terminate the contract.

4 (c) If the seller provides the notice at or before the  
5 closing of the contract and the purchaser elects to close even  
6 though the notice was not timely provided before the execution of  
7 the contract, it is conclusively presumed that the purchaser has  
8 waived all rights to terminate the contract and recover damages or  
9 pursue other remedies or rights under this subchapter.

10 Sec. 377.203. SIGNATURE OF PURCHASER. The purchaser shall  
11 sign the notice required by Section 377.201 or the contract that  
12 includes the notice to evidence the purchaser's receipt of the  
13 notice.

14 Sec. 377.204. RECORDING OF NOTICE. (a) At the closing of  
15 the contract, the seller and purchaser shall execute and  
16 acknowledge a separate copy of the notice required by Section  
17 377.201 containing information that is accurate at the time of the  
18 closing and shall record the copy of the notice in the deed records  
19 of each county in which the property is located.

20 (b) In completing the notice to be executed by the seller  
21 and purchaser at the closing of the contract, a seller, title  
22 company, real estate broker, or examining attorney, and any agent,  
23 representative, or person acting on behalf of the seller, company,  
24 broker, or attorney, may rely on the accuracy of the information  
25 form and map or plat that is last filed by the district under  
26 Section 377.210.

27 (c) Any information taken from the information form and map



1 or plat filed by the district under Section 377.210 is conclusively  
2 presumed to be correct as a matter of law for purposes of this  
3 section.

4 Sec. 377.205. MODIFICATION OF NOTICE. (a) A seller and any  
5 agent, representative, or person acting on the seller's behalf may  
6 modify the notice prescribed by Section 377.201 by substituting the  
7 words "January 1, \_\_\_\_" for the words "this date" and placing the  
8 correct calendar year in the appropriate space.

9 (b) Except as otherwise provided in Section 377.204, any  
10 information taken from the information form and map or plat filed by  
11 the district in effect as of January 1 of each year is conclusively  
12 presumed as a matter of law to be correct for the period beginning  
13 January 1 and ending December 31 of the same calendar year, for  
14 purposes of the notice to be given to the prospective purchaser  
15 before the execution of the contract.

16 (c) A seller and any person completing the prescribed notice  
17 on the seller's behalf may provide on the prescribed notice form any  
18 available information that is more recent than the information  
19 contained in the information form and map or plat filed of record by  
20 the district under Section 377.210 in effect as of January 1 of each  
21 year.

22 (d) Subsection (c) does not create an affirmative duty on  
23 the part of a seller or any person completing the prescribed notice  
24 on the seller's behalf to provide on the prescribed notice form more  
25 recent information than the information taken from the information  
26 form and map or plat filed of record by the district in effect as of  
27 January 1 of each year.

1       Sec. 377.206. RELIANCE ON INFORMATION FORM AND MAP OR PLAT  
2 FILED BY DISTRICT. (a) In completing the notice required to be  
3 given to a prospective purchaser before the execution of the  
4 contract, a seller, title insurance company, examining attorney,  
5 vendor of property and tax information, real estate broker, or  
6 lienholder, and any agent, representative, or person acting on  
7 behalf of the seller, company, attorney, vendor, broker, or  
8 lienholder, may rely on the information contained in the  
9 information form and map or plat filed of record by the district in  
10 effect as of January 1 of each year. Any seller, purchaser, title  
11 insurance company, real estate broker, examining attorney, or  
12 lienholder may rely on the information form and map or plat filed by  
13 the district.

14       (b) If the notice is given at closing as provided by this  
15 subchapter, a purchaser, or the purchaser's heirs, successors, or  
16 assigns, may not maintain an action, including an action for  
17 damages, against a seller, title insurance company, real estate  
18 broker, or lienholder, or any agent, representative, or person  
19 acting on behalf of the seller, company, broker, or lienholder,  
20 because of the seller's use of the information filed of record by  
21 the district or the seller's reliance on the filed plat and filed  
22 legal description of the district to determine whether the property  
23 to be purchased is in the district.

24       (c) An action may not be maintained against a title company  
25 for the failure to disclose that the described real property is  
26 included in a district if the district did not file for record the  
27 information form and map or plat with the county clerk.

1       Sec. 377.207. WAIVER OF DAMAGES. A purchaser who purchases  
2 real property in a district and who later sells the property is  
3 conclusively considered on the closing of the sale to have waived  
4 any prior right to damages under this subchapter.

5       Sec. 377.208. SUIT FOR DAMAGES. (a) Except as otherwise  
6 provided in Section 377.209, if a sale of real property in a  
7 district fails to comply with this subchapter, the purchaser may  
8 file a suit for:

9           (1) the amount of all costs related to the purchase of  
10 the property plus interest and reasonable attorney's fees; or

11           (2) an amount not to exceed \$5,000 plus reasonable  
12 attorney's fees.

13       (b) A suit for damages under Subsection (a)(1) may be filed  
14 jointly or severally against the individual or entity that sold the  
15 property to the purchaser. Following the recovery of damages under  
16 Subsection (a)(1), the amount of the damages shall be paid first to  
17 satisfy all unpaid obligations on each outstanding lien on the  
18 property and the remainder of the damage amount shall be paid to the  
19 purchaser. On payment of all damages recovered under Subsection  
20 (a)(1) to each lienholder and the purchaser, the purchaser shall  
21 reconvey the property to the seller.

22       (c) A purchaser may not recover damages under both  
23 Subsections (a)(1) and (a)(2). An entry of a final decision  
24 awarding damages to the purchaser under either Subsection (a)(1) or  
25 (a)(2) precludes the purchaser from recovering damages under the  
26 other subsection.

27       (d) The relief provided under Subsection (a) provides the

1 exclusive remedies for a purchaser aggrieved by the seller's  
2 failure to comply with this subchapter.

3 (e) An action for damages under this section does not apply  
4 to change the validity of any existing vendor's lien, mechanic's  
5 lien, or deed of trust lien on the property.

6 (f) A suit for damages under this section must be filed on or  
7 before the fourth anniversary of the date on which the property is  
8 sold to the purchaser. If a purchaser does not bring suit on or  
9 before that anniversary, the purchaser may not recover damages  
10 under this section.

11 (g) A purchaser may not recover damages under this section  
12 if the person:

13 (1) purchases an equity interest in real property and,  
14 in conjunction with the purchase, assumes any liens, including a  
15 purchase money lien; and

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

18 Sec. 377.209. EXEMPTION FROM DAMAGES. A seller, title  
19 company, real estate broker, or examining attorney, and an agent,  
20 representative, or person acting on behalf of the seller, company,  
21 broker, or attorney, is not liable for damages under Section  
22 377.208 or liable for any other damages to any person for:

23 (1) failing to provide the notice required by Section  
24 377.201 to a purchaser before the execution of the contract, or at  
25 or before the closing of the contract, if the district did not file  
26 the information form and map or plat as required under Section  
27 377.210; or

1           (2) unintentionally providing a notice required by  
2 Section 377.201 that is incorrect under the circumstances before  
3 the execution of the contract or at or before the closing of the  
4 contract.

5           Sec. 377.210. FILING INFORMATION; PENALTIES. (a) The  
6 board shall file with the county clerk of each county in which the  
7 district is located an affirmed and acknowledged information form  
8 that includes the information required in Subsection (b) and a  
9 complete map or plat that describes the district boundaries.

10           (b) The information form filed by a district under this  
11 section shall include:

12                   (1) the district name;

13                   (2) the complete legal description of the district  
14 boundaries;

15                   (3) the most recent rate of sales and use taxes imposed  
16 by the district;

17                   (4) the total amount of bonds that have been approved  
18 by the voters and that may be issued by the district, excluding  
19 refunding bonds and any bonds or portion of bonds payable solely  
20 from revenues received or expected to be received under a contract  
21 with a governmental entity;

22                   (5) the aggregate initial principal amount of all  
23 bonds of the district payable wholly or partly from taxes,  
24 excluding refunding bonds and any bonds or portion of bonds payable  
25 solely from revenues received or expected to be received under a  
26 contract with a governmental entity, that have been previously  
27 issued;

1           (6) the date on which the election to confirm the  
2 creation of the district was held;

3           (7) a statement of the functions performed or to be  
4 performed by the district; and

5           (8) the notice to purchasers form required by Section  
6 377.201 to be furnished by a seller to a purchaser of real property  
7 in the district, completed by the district with all the information  
8 required to be furnished by the district.

9           (c) If a district has not imposed taxes when the district  
10 files the information form under this section, the district shall  
11 substitute for Subsections (b)(3) and (b)(5) a statement that the  
12 district has not imposed taxes at the time of filing that includes  
13 the district's most recent projected rate of debt service tax.

14           (d) The information form and map or plat required by this  
15 section must be signed by a majority of the directors and affirmed  
16 and acknowledged by each director who signed the form and map or  
17 plat before it is filed with the county clerk. Each amendment made  
18 to an information form, map, or plat must be signed by the directors  
19 and affirmed and acknowledged by each director who signed the form  
20 and map or plat before it is filed with the county clerk.

21           (e) The information form required by this section must be  
22 filed with the county clerk not later than the second day after the  
23 date on which the results of the confirmation election are  
24 declared.

25           (f) If there is a change in any of the information contained  
26 in the district information form, map, or plat, the district shall  
27 file an amendment to the information form, map, or plat setting

1 forth the changes made not later than the seventh day after the  
2 change in information.

3 (g) A person commits an offense if the person affirms the  
4 accuracy of and acknowledges an information form, map, or plat, or  
5 any amendment to an information form, map, or plat that includes  
6 inaccurate information. An offense under this subsection is a  
7 Class C misdemeanor.

8 (h) If a district fails to timely file the information  
9 required by this section, the attorney general or the district or  
10 county attorney of a county in which the district is located may  
11 seek a writ of mandamus to require the board to prepare and file the  
12 necessary information.

13 (i) A director commits an offense if the director wilfully  
14 fails to join in filing an information form, map, or plat or an  
15 amendment to an information form, map, or plat under this section.  
16 An offense under this subsection is a Class C misdemeanor. A  
17 director is presumed to have wilfully failed to join in the filing  
18 of an information form, map, or plat or an amendment to an  
19 information form, map, or plat if that director was present at the  
20 meeting at which the information included in the information form,  
21 map, or plat or amendment to the information form, map, or plat was  
22 adopted and the director did not sign the information form, map, or  
23 plat, or amendment to the information form, map, or plat.

24 Sec. 377.211. ADDITIONAL FILING ON DISSOLUTION. (a) If a  
25 district is dissolved or is consolidated with another district, the  
26 board shall file with the information form a statement that the  
27 district is being dissolved or consolidated that includes the

1 effective date of the dissolution or consolidation.

2 (b) After a district is dissolved and the statement is filed  
3 under this section, a person who sells property in the dissolved  
4 district is not required to give notice under this subchapter.

5 (b) The change in law made by Subchapter G, Chapter 377,  
6 Local Government Code, as added by this section, applies only to a  
7 transfer of property that occurs on or after the effective date of  
8 this section. For purposes of this subsection, a transfer of  
9 property occurs before the effective date of this section if the  
10 contract of purchase and sale binding the purchaser to purchase the  
11 property was executed before that date. Property transferred  
12 before the effective date of this section is covered by the law in  
13 effect when the property was transferred, and the former law is  
14 continued in effect for that purpose.

15 (c) A municipal development district created before the  
16 effective date of this section shall file an information form as  
17 required by Section 377.210, Local Government Code, as added by  
18 this section, not later than September 3, 2003.

19 SECTION 6. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2003.