

By: Nelson, et al.

S.B. No. 420

Substitute the following for S.B. No. 420:

By: Lewis

C.S.S.B. No. 420

A BILL TO BE ENTITLED

AN ACT

relating to county development districts; providing penalties.

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

SECTION 1. (a) Section 383.022, Local Government Code, is amended to read as follows:

Sec. 383.022. PETITION OF LANDOWNERS. (a) To create a district, a petition requesting creation must be filed with the commissioners court of the county in which all of the land in the proposed district is located.

(b) The petition must be accompanied by:

(1) a sworn statement indicating consent to creation signed by the holders of fee simple title of all of the land in the proposed district; and

(2) proof of written notice to a municipality of the district's proposed creation and boundaries, if the proposed district contains land in the extraterritorial jurisdiction of that municipality.

(b) The changes made to Section 383.022, Local Government Code, by this section apply only to a county development district created on or after the effective date of this section. A district that is created before the effective date of this section is governed by the law applicable to the district immediately before the effective date of this section, and that law is continued in effect for that purpose.

1 SECTION 2. (a) Subchapter B, Chapter 383, Local Government  
2 Code, is amended by adding Section 383.0235 to read as follows:

3 Sec. 383.0235. CONSENT OF MUNICIPALITY. (a) Land in the  
4 corporate limits of a municipality may be included in a district  
5 only if the municipality, by resolution or ordinance, grants its  
6 written consent to the inclusion of the land in the district.

7 (b) A municipality may consent in writing to the inclusion  
8 in the district of land in the corporate limits of a municipality  
9 only if the municipality receives a petition requesting the  
10 municipality's consent to the inclusion of land signed by:

11 (1) the owners of the majority of the assessed value of  
12 real property in the proposed boundaries in the district according  
13 to the most recent certified county tax appraisal roll; or

14 (2) at least 50 landowners in the proposed boundaries  
15 of the district, if more than 50 persons own land in the proposed  
16 boundaries according to the most recent certified county tax  
17 appraisal roll.

18 (c) The petition must:

19 (1) describe the boundaries of the land to be included  
20 in the district by:

21 (A) metes and bounds; or

22 (B) lot and block number, if there is a recorded  
23 map or plat and survey of the area; and

24 (2) state the general nature of the work proposed to be  
25 done by the district, the necessity for the work, and the cost of  
26 the project as then estimated by those filing the petition.

27 (d) The municipality may not:

1           (1) condition its consent on a limitation of the  
2 amounts of the district's bonds; or

3           (2) require annexation as a condition to its consent.

4           (e) In its written consent to the inclusion of land in a  
5 district, a municipality may:

6           (1) require the district to construct all facilities  
7 to serve the land in accordance with plans and specifications that  
8 the municipality has approved;

9           (2) provide that the municipality has the right to  
10 inspect all facilities being constructed by the district;

11           (3) restrict the terms of the district's bonds and  
12 notes issued to provide service to the land in the municipality's  
13 corporate limits and restrict the conditions on the sale of the  
14 district's bonds and notes if the restrictions do not generally  
15 render the district's bonds and notes unmarketable; or

16           (4) require the district to enter into an allocation  
17 agreement with the municipality before the first issue of bonds,  
18 notes, warrants, or other obligations of the district, that  
19 provides:

20           (A) a method by which the district continues to  
21 exist following the annexation of all of the territory in the  
22 district by the municipality, if the district is initially located  
23 outside the corporate limits of the municipality;

24           (B) an allocation of governmental services to be  
25 provided by the municipality or the district following the date of  
26 the inclusion of all of the district's territory in the  
27 municipality's corporate boundaries; and

1           (C) any other term considered appropriate by the  
2 municipality's governing body.

3           (f) In addition to rights and remedies provided by other  
4 law, the municipality is entitled to injunctive relief or a writ of  
5 mandamus requiring the district and its officials to observe and  
6 comply with the terms prescribed in the municipality's written  
7 consent if a district violates the terms of a municipality's  
8 written consent.

9           (b) Section 383.0235, Local Government Code, as added by  
10 this section, applies only to land added to a county development  
11 district on or after the effective date of this section. Land added  
12 to a district before the effective date of this section is governed  
13 by the law applicable to the district immediately before the  
14 effective date of this section, and that law is continued in effect  
15 for that purpose.

16           SECTION 3. (a) Section 383.034, Local Government Code, is  
17 amended by adding Subsections (e) and (f) to read as follows:

18           (e) The temporary board of directors shall file an order  
19 canvassing the results of an election with the district records and  
20 the county clerk. The order must describe the district's  
21 boundaries. The county clerk shall record the order.

22           (f) After receipt of the minute order under Subsection (c),  
23 the taxing entity shall instruct the tax collector for that entity  
24 to disclose on the tax statement for each property located in the  
25 district that the property is located in the district. The tax  
26 collector shall include the disclosure on each real property tax  
27 statement that is issued after the tax collector receives the

1 instruction.

2 (b) The changes made to Section 383.034, Local Government  
3 Code, by this section apply only to an election that occurs on or  
4 after the effective date of this section. An election that occurs  
5 before the effective date of this section is governed by the law  
6 applicable to the election immediately before the effective date of  
7 this section, and that law is continued in effect for that purpose.

8 SECTION 4. (a) Section 383.043, Local Government Code, is  
9 amended to read as follows:

10 Sec. 383.043. PERSONS DISQUALIFIED TO SERVE. Section  
11 49.052 [~~50.026~~], Water Code, applies to a director of a district.

12 (b) The changes made to Section 383.043, Local Government  
13 Code, by this section apply only to a director of a county  
14 development district appointed or elected on or after the effective  
15 date of this section. A director appointed or elected before the  
16 effective date of this section is governed by the law applicable to  
17 the director immediately before the effective date of this section,  
18 and that law is continued in effect for that purpose.

19 SECTION 5. Section 383.053, Local Government Code, is  
20 amended by amending Subsection (a) and adding Subsections (d) and  
21 (e) to read as follows:

22 (a) The board may establish regular meetings to conduct  
23 district business and may hold special meetings at other times as  
24 the business of the district requires. The board may designate one  
25 or more places inside or outside the district for conducting the  
26 meetings.

27 (d) On written request of at least 25 qualified voters who

1 reside in the district, the board may meet only in the district for  
2 the year after the date on which the board received the request.

3 (e) The board shall give notice of any meeting place outside  
4 the district by filing a resolution establishing the location of  
5 the meeting place with the commissioners court and by publishing  
6 notice of the location in a newspaper of general circulation in the  
7 district. If the location of a meeting place outside the district  
8 changes, the board shall give notice in the same manner.

9 SECTION 6. Subchapter D, Chapter 383, Local Government  
10 Code, is amended by adding Sections 383.067 and 383.068 to read as  
11 follows:

12 Sec. 383.067. INFRASTRUCTURE FOR RESIDENTIAL SUBDIVISIONS;  
13 TOURISM. The district may construct, finance, or otherwise provide  
14 infrastructure for a residential subdivision only if the  
15 infrastructure serves the purpose of attracting visitors and  
16 tourists to the county.

17 Sec. 383.068. AD VALOREM TAXES PROHIBITED. The district  
18 may not impose an ad valorem tax.

19 SECTION 7. (a) Subchapter D, Chapter 383, Local Government  
20 Code, is amended by adding Section 383.069 to read as follows:

21 Sec. 383.069. POSTING SIGNS IN DISTRICT. (a) Not later  
22 than the 30th day after the date the district is created, the  
23 district shall post signs indicating the district's existence at  
24 two principal entrances to the district.

25 (b) The board shall determine the information on and the  
26 size and exact location of the signs.

27 (b) Section 383.069, Local Government Code, as added by this

1 section, takes effect September 1, 2003.

2 (c) A county development district created under Chapter  
3 383, Local Government Code, before the effective date of this  
4 section, shall comply with Section 383.069, Local Government Code,  
5 as added by this section, not later than January 1, 2004.

6 SECTION 8. (a) Section 383.084, Local Government Code, is  
7 amended by amending Subsection (a) and adding Subsections (c) and  
8 (d) to read as follows:

9 (a) Before the board issues bonds, the board, [~~on its own~~  
10 ~~motion or~~] on request of a landowner in the district, may petition  
11 the commissioners court for the addition of land to or exclusion of  
12 land from the district.

13 (c) The commissioners court shall file the order adding or  
14 excluding land with the county clerk. The county clerk shall record  
15 the order.

16 (d) The commissioners court may not add or exclude land  
17 under this section unless:

18 (1) each person who owns land that is to be added or  
19 excluded consents to the addition or exclusion; and

20 (2) each municipality has been notified of the  
21 proposed addition or exclusion of land, if land in the  
22 extraterritorial jurisdiction of that municipality is to be added  
23 or excluded.

24 (b) Section 383.084, Local Government Code, as amended by  
25 this section, applies only to land added to or excluded from a  
26 county development district on or after the effective date of this  
27 section. Land added to or excluded from a district before the

1 effective date of this section is governed by the law applicable to  
2 the district immediately before the effective date of this section,  
3 and that law is continued in effect for that purpose.

4 SECTION 9. (a) Chapter 383, Local Government Code, is  
5 amended by adding Subchapter I to read as follows:

6 SUBCHAPTER I. AUDIT OF DISTRICT ACCOUNTS AND RECORDS

7 Sec. 383.141. DUTY TO AUDIT. (a) The board shall have the  
8 district's fiscal accounts and records audited annually at the  
9 expense of the district.

10 (b) The audit must be performed by a certified public  
11 accountant or public accountant certified or licensed under Chapter  
12 901, Occupations Code.

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

15 Sec. 383.142. FORM OF AUDIT. The district audit shall be  
16 performed according to the generally accepted auditing standards  
17 adopted by the American Institute of Certified Public Accountants  
18 as of January 1, 2003, or later standards adopted by the board under  
19 this section. Financial statements shall be prepared in accordance  
20 with the generally accepted accounting principles adopted by the  
21 American Institute of Certified Public Accountants as of January 1,  
22 2003, or later principles adopted by the board under this section.  
23 The board shall consider later changes to the standards or  
24 principles adopted by the institute and may adopt a standard or  
25 principle if the board considers it reasonable.

26 Sec. 383.143. FINANCIAL REPORTS. (a) Any depository,  
27 treasurer, or bookkeeper who receives or has control over any



1 district money shall keep a full and itemized account of that  
2 money.

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

5 Sec. 383.144. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL  
6 REPORTS. (a) After the board approves the audit and not later than  
7 the 135th day after the last day of the district's fiscal year, the  
8 board shall file a copy of the audit report to the commissioners  
9 court and the comptroller.

10 (b) If the board refuses to approve the audit report, the  
11 board shall file a copy of the report to the commissioners court and  
12 the comptroller not later than the 135th day after the last day of  
13 the district's fiscal year. The report must be accompanied by a  
14 statement from the board explaining the reasons for its failure to  
15 approve the report.

16 (c) A district shall file a copy of each audit in the  
17 district office.

18 (d) When the audit report is filed with the comptroller  
19 under Subsection (a), the board shall file with the comptroller an  
20 annual filing affidavit in a format prescribed by the comptroller.  
21 The affidavit must be executed by an authorized representative of  
22 the board and must state that all copies of the audit report have  
23 been filed as required by this section.

24 Sec. 383.145. NONCOMPLIANCE; DUTY OF COMPTROLLER. The  
25 comptroller shall file with the attorney general the names of any  
26 districts that do not comply with this subchapter.

27 (b) A county development district shall have an annual audit

1 performed as required by Subchapter I, Chapter 383, Local  
2 Government Code, as added by this section, only for each fiscal year  
3 that begins on or after the effective date of this section.

4 SECTION 10. (a) Chapter 383, Local Government Code, is  
5 amended by adding Subchapter J to read as follows:

6 SUBCHAPTER J. NOTICE OF DISTRICT TO PURCHASERS OF REAL PROPERTY;  
7 FILING OF INFORMATION

8 Sec. 383.161. NOTICE TO PURCHASERS. (a) If a person  
9 proposes to sell real property located in a district that is  
10 acquiring or planning to acquire a project that has been financed or  
11 is proposed to be financed with district bonds payable wholly or  
12 partly from district taxes and for which the last tax statement for  
13 the property includes a disclosure that the property is located in a  
14 district, the person must give to the purchaser written notice as  
15 prescribed by this section. An executory contract that has a  
16 performance period of more than six months is considered a sale of  
17 real property under this section.

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

19 (1) under any type of lien foreclosure;

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

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

23 (4) to a governmental entity.

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

25 "The real property, described below, that you are about to  
26 purchase is located in the \_\_\_\_\_ County Development District.

27 (The tax statement will disclose if the property is located in a

1 district.) The district has taxing authority separate from any  
2 other taxing authority and may, subject to voter approval, issue an  
3 unlimited amount of bonds and impose a sales and use tax in payment  
4 of those bonds.

5 "The purpose of this district is to provide incentives for  
6 the location and development of projects to attract visitors and  
7 tourists to the county through the issuance of bonds payable wholly  
8 or partly from sales and use taxes. The cost of the facilities  
9 built or maintained for this purpose is not included in the purchase  
10 price of the property you are purchasing, and these facilities are  
11 owned or to be owned by the district.

12 "The district is required to maintain information on the  
13 Internet at a domain name that is substantially similar to the name  
14 of the district or on the Internet as part of the county's website.  
15 The information includes information about the tax rate, projected  
16 tax rate, bond debt, amount of approved bonds, and other  
17 information about the district.

18 \_\_\_\_\_(date)

19 \_\_\_\_\_Signature of Seller

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

27 "The undersigned purchaser acknowledges receipt of this

1 notice at or before the execution of a contract for the purchase of  
2 the real property described in the notice or at closing of purchase  
3 of the real property.

4 \_\_\_\_\_ (date)

5 \_\_\_\_\_ Signature of Purchaser"

6 Sec. 383.162. TIMING OF NOTICE. (a) The notice required  
7 by Section 383.161 must be given to the prospective purchaser  
8 before the execution of the contract. The notice may be given  
9 separately or as an addendum or paragraph to the contract.

10 (b) If the seller fails to provide the notice required by  
11 Section 383.161, the purchaser may terminate the contract not later  
12 than the seventh day after the date of closing of the contract.

13 Sec. 383.163. SIGNATURE OF PURCHASER. The purchaser shall  
14 sign the notice required by Section 383.161 or the contract that  
15 includes the notice to evidence the purchaser's receipt of the  
16 notice.

17 Sec. 383.164. RECORDING OF NOTICE. (a) At the closing of  
18 the contract, the seller and purchaser shall execute and  
19 acknowledge a separate copy of the notice required by Section  
20 383.161 containing information that is accurate at the time of the  
21 closing and shall record the copy of the notice in the county deed  
22 records.

23 (b) In completing the notice to be executed by the seller  
24 and purchaser at the closing of the contract, a seller, title  
25 company, real estate broker, or examining attorney, and any agent,  
26 representative, or person acting on behalf of the seller, company,  
27 broker, or attorney, may rely on the accuracy of the information

1 form and map or plat that is last filed by the district under  
2 Section 383.168 or maintained by the district under Section  
3 383.170.

4 (c) Any information taken from the information form and map  
5 or plat filed by the district under Section 383.168 or maintained by  
6 the district under Section 383.170 is conclusively presumed to be  
7 correct as a matter of law for purposes of this section.

8 Sec. 383.165. RELIANCE ON INFORMATION FORM AND MAP OR PLAT  
9 FILED BY DISTRICT. (a) In completing the notice required to be  
10 given to a prospective purchaser before the execution of the  
11 contract, a seller, title insurance company, examining attorney,  
12 vendor of property and tax information, real estate broker, or  
13 lienholder, and any agent, representative, or person acting on  
14 behalf of the seller, company, attorney, vendor, broker, or  
15 lienholder, may rely on the information contained in the  
16 information form and map or plat filed of record by the district in  
17 effect as of January 1 of each year or maintained by the district  
18 under Section 383.170. Any seller, purchaser, title insurance  
19 company, real estate broker, examining attorney, or lienholder may  
20 rely on the information form and map or plat filed by the district  
21 or maintained by the district under Section 383.170.

22 (b) If the notice is given at closing as provided by this  
23 subchapter, a purchaser, or the purchaser's heirs, successors, or  
24 assigns, may not maintain an action, including an action for  
25 damages, against a seller, title insurance company, real estate  
26 broker, or lienholder, or any agent, representative, or person  
27 acting on behalf of the seller, company, broker, or lienholder,

1 because of the seller's use of the information filed of record by  
2 the district or maintained by the district under Section 383.170,  
3 or the seller's reliance on the filed plat and filed legal  
4 description of the district to determine whether the property to be  
5 purchased is in the district.

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

10 Sec. 383.166. WAIVER OF DAMAGES. A purchaser who purchases  
11 real property in a district and who later sells the property is  
12 conclusively considered on the closing of the sale to have waived  
13 any prior right to damages under this subchapter.

14 Sec. 383.167. EXEMPTION FROM DAMAGES. A seller, title  
15 company, real estate broker, or examining attorney, and an agent,  
16 representative, or person acting on behalf of the seller, company,  
17 broker, or attorney, is not liable for damages to any person for:

18 (1) failing to provide the notice required by Section  
19 383.161 to a purchaser before the execution of the contract, or at  
20 or before the closing of the contract, if the district did not file  
21 the information form and map or plat as required under Section  
22 383.168 or maintain the information required under Section 383.170;  
23 or

24 (2) unintentionally providing a notice required by  
25 Section 383.161 that is incorrect under the circumstances before  
26 the execution of the contract or at or before the closing of the  
27 contract.

1       Sec. 383.168. FILING INFORMATION; PENALTIES. (a) The  
2 board shall file with the county clerk an affirmed and acknowledged  
3 information form that includes the information required in  
4 Subsection (b) and a complete map or plat that describes the  
5 district boundaries.

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

8           (1) the district name;

9           (2) the complete legal description of the district  
10 boundaries;

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

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

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

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

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

1           (8) the notice to purchasers form required by Section  
2 383.161 to be furnished by a seller to a purchaser of real property  
3 in the district, completed by the district with all the information  
4 required to be furnished by the district.

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

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

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

21           (f) If there is a change in any of the information contained  
22 in the district information form, map, or plat, the district shall  
23 file an amendment to the information form, map, or plat setting  
24 forth the changes made not later than the seventh day after the  
25 change in information.

26           (g) A person commits an offense if the person affirms the  
27 accuracy of and acknowledges an information form, map, or plat or



1 any amendment to an information form, map, or plat that includes  
2 inaccurate information. An offense under this subsection is a  
3 Class C misdemeanor.

4 (h) If a district fails to timely file the information  
5 required by this section, the attorney general or the district or  
6 county attorney may seek a writ of mandamus to require the board to  
7 prepare and file the necessary information.

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

19 Sec. 383.169. ADDITIONAL FILING ON DISSOLUTION. (a) If a  
20 district is dissolved, annexed to another local government, or  
21 consolidated with another district, the board shall file with the  
22 information form a statement that the district is being dissolved,  
23 annexed, or consolidated that includes the effective date of the  
24 dissolution, annexation, or consolidation.

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

1       Sec. 383.170. FILING INFORMATION ON INTERNET. (a) The  
2 district shall maintain information on the Internet at a domain  
3 name that is substantially similar to the name of the district or on  
4 the Internet as part of the county's website.

5       (b) The district shall maintain on the Internet site the  
6 most current information described by Section 383.168 in a format  
7 that is readily accessible to the public without charge. The  
8 district or the county may not charge the public to access the site.

9       (c) The attorney general, an interested person, the  
10 district attorney, or the county attorney may seek a writ of  
11 mandamus to compel the district to comply with this section.

12       (d) This section does not apply to a dissolved district.

13       (b) The changes in law made by Sections 383.161-383.165,  
14 Local Government Code, as added by this section, apply only to a  
15 transfer of property that occurs on or after January 1, 2004. For  
16 purposes of this subsection, a transfer of property occurs before  
17 January 1, 2004, if the contract of purchase and sale binding the  
18 purchaser to purchase the property was executed before that date.  
19 Property transferred before January 1, 2004, is covered by the law  
20 in effect when the property was transferred, and the former law is  
21 continued in effect for that purpose.

22       (c) A county development district created before the  
23 effective date of this section shall file an information form as  
24 required by Section 383.168, Local Government Code, as added by  
25 this section, not later than September 3, 2003.

26       SECTION 11. Subchapter A, Chapter 383, Local Government  
27 Code, is amended by adding Section 383.006 to read as follows:

1           Sec. 383.006. EXEMPTION FOR HAYS COUNTY DEVELOPMENT  
2 DISTRICT NO. 1. The changes in law made by Senate Bill No. 420, Acts  
3 of the 78th Legislature, Regular Session, 2003, do not apply to the  
4 Hays County Development District No. 1, and the law as it existed  
5 immediately before the effective date of that Act is continued in  
6 effect for purposes related to that district.

7           SECTION 12. This Act takes effect immediately if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section 39, Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for immediate  
11 effect, this Act takes effect September 1, 2003.