

BILL ANALYSIS

C.S.H.B. 1543
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texans who reside in a public improvement district may be unaware of the obligation to pay certain public improvement district assessments, which are initially required when living within the jurisdiction of a district. These assessments may be costly, and they often surprise homeowners when appearing on a property tax statement after purchase. Stronger pre-purchase disclosure procedures for property within such a district would better prepare a buyer for these assessments. C.S.H.B. 1543 seeks to provide this disclosure by revising certain procedural requirements and requiring notices of obligation to pay the assessments be given to a purchaser before the execution of a contract to purchase property within a district.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1543 amends the Local Government Code and Property Code to revise certain procedural requirements for public improvements districts in municipalities and counties and for transfers of property located in such districts with respect to the following:

- an improvement order;
- a service plan and subsequent reliance on a filed service plan;
- requisite notices of obligations related to a public improvement district, including a public improvement district composed of territory in which the only businesses are a certain number of hotels;
- requisite notice given before execution of a contract;
- the recording of notice at closing; and
- suits for damages.

C.S.H.B. 1543 amends the Local Government Code, with respect to an applicable governing body's adoption of a resolution authorizing an improvement district, to provide the following:

- except for a district composed of territory in which the only businesses are a certain number of hotels, a resolution authorizing the establishment of a public improvement district must provide that the authorization takes effect on the date the resolution is adopted; and
- a municipality or county that authorizes a district, not later than the seventh day after the date the governing body of the municipality or county adopts the resolution authorizing

the district, must file a copy of the resolution with the county clerk of each county in which all or part of the improvement district is located.

C.S.H.B. 1543, with respect to an ongoing service plan, clarifies that the governing body of the municipality or county may approve such a plan for a district only by ordinance or order and establishes that the governing body may amend or update the plan only by ordinance or order. The bill provides the following:

- the plan must include a copy of a notice of obligations related to the district;
- the governing body must review and update the plan annually; and
- the municipality or county, not later than the seventh day after the date the governing body approves a service plan or amends or updates the service plan, must file a copy of the approved plan or amended or updated plan with the county clerk of each county in which all or part of the public improvement district is located.

A district composed of territory in which the only businesses are a certain number of hotels is exempt from the requirement that the service plan be amended or updated only by ordinance or order.

C.S.H.B. 1543 amends the Property Code to revise provisions with respect to the notice of obligations sent by a seller to a purchaser of residential real property that is located in a public improvement district regarding an assessment payable to a municipality or county. The bill removes the specification that such notice is applicable to residential real property consisting of not more than one dwelling unit located in Texas. The bill revises the contents of the notice and provides the following:

- a person who proposes to sell or otherwise convey applicable real property, rather than only a seller, must execute the notice;
- the written notice must first be given to the purchaser; and
- the exemption from the notice requirements applicable to the transfer of a real property interest in a condominium is removed.

C.S.H.B. 1543 provides for a notice of obligation to pay a public improvement district assessment for a district composed of territory in which the only businesses are a certain number of hotels. The bill requires the notice to be executed by the seller and sets out the content and form of the notice. The bill establishes that the seller or the municipality or county that created the public improvement district may provide additional information regarding the district in the notices, including whether an assessment has been levied, the amount of the assessment, and the payment schedule for assessments.

C.S.H.B. 1543 revises, clarifies, and reorganizes provisions regarding the notice required before contract execution to provide the following:

- the notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract;
- in the event a contract of purchase and sale is entered into without the seller providing the notice, the purchaser is entitled to terminate the contract;
- it is conclusively presumed that the purchaser has waived all rights to terminate the contract or recover damages or other remedies or rights under the bill's provisions regarding suits for damages if the seller furnishes the notice at or before closing the purchase and sale contract and the purchaser elects to close even though the notice was not timely furnished before execution of the contract;
- a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring the notice; and
- the purchaser must sign the required notice or the purchase contract including the notice to evidence the receipt of notice.

All sellers, title companies, real estate brokers, and examining attorneys, and any agent, representative, or person acting on their behalf, are not liable for damages under the bill's provisions relating to suits for damages, or for any other damages to any person, for the following:

- failing to provide the notice to a purchaser before execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract when the municipality or county has not filed the required service plan; or
- unintentionally providing a notice that is not the correct notice under the circumstances before execution of a binding contract of purchase and sale, or at or before the closing of the purchase and sale contract.

C.S.H.B. 1543 requires a separate copy of the requisite notice, at the closing of purchase and sale, to be executed by the seller and purchaser, acknowledged, and recorded in the deed records of the county in which the property is located.

C.S.H.B. 1543 sets out provisions entitling an applicable person or entity to rely on a municipality's or county's applicably filed service plan in, among other things, completing the requisite notice. The bill establishes the circumstances under which a purchaser, or the purchaser's heirs, successors, or assigns, are not entitled to maintain an action for damages. An action may not be maintained against any title company for failure to disclose the inclusion of the property in a public improvement district when the municipality or county has not filed the service plan with the clerk of each county in which the district is located.

C.S.H.B. 1543 sets out the following provisions regarding suits for damages:

- provisions under which a purchaser may institute a suit for damages if any sale or conveyance of real property within a public improvement district is not made in compliance with applicable notice provisions;
- provisions regarding the recovery of damages and the priority of payments from those damages;
- provisions establishing a deadline for bringing a suit;
- provisions establishing the circumstances under which a purchaser may not recover damages and is conclusively considered to have waived any prior right to damages under the bill's provisions; and
- provisions establishing the relief provided by the bill as the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with applicable provisions.

Such a suit may be instituted jointly or severally against the person or legal entity that sold or conveyed the property. An action for damages does not apply to, affect, alter, or impair the validity of an existing vendor's lien, mechanic's lien, or deed of trust lien on the applicable property.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1543 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions providing for a notice of obligation to pay a public improvement district assessment for an improvement district composed of territory in which the only businesses are a certain number of hotels as described in the Public Improvement District Assessment Act.

The substitute includes an exception, applicable to such a district, from the requirement that the resolution authorizing the district provide that the authorization take effect on the date the resolution is adopted.

The substitute includes an exception for a service plan of such a district from the requirement that the amendment or update of a service plan be made only by ordinance or order.