By:  Parker (Senate Sponsor - Creighton) H.B. No. 1543

(In the Senate - Received from the House April 19, 2021; May 4, 2021, read first time and referred to Committee on Local Government; May 13, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 13, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Bettencourt       X

Menéndez          X

Eckhardt          X

Gutierrez         X

Hall              X

Nichols           X

Paxton            X

Springer          X

Zaffirini         X

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

(b)  The service plan must:

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

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

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

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

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

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

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

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

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

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

CONCERNING THE FOLLOWING PROPERTY [~~AT~~]

(insert property [~~street~~] address)

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

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

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Purchaser

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

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality levying assessment), TEXAS

CONCERNING THE FOLLOWING HOTEL PROPERTY

(insert property address)

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

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Purchaser

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

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

(1)  under a court order or foreclosure sale;

(2)  by a trustee in bankruptcy;

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

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

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

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

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

(8)  to or from a governmental entity; or

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

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

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

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

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

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

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

Sec. 5.0141.  NOTICE REQUIRED BEFORE CONTRACT EXECUTION. (a) The notice required by Section 5.014 shall 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.

(b)  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.

(c)  If, however, 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, it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract under Subsection (b) or recover damages or other remedies or rights under Section 5.0145.

(d)  Notwithstanding any provision of this section, Section 5.014, 5.0142, 5.0143, 5.0144, or 5.0145, 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 Section 5.0145, or for any other damages to any person, for:

(1)  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 service plan as required by Section 372.013, Local Government Code; or

(2)  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.

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

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

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

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

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

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

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

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

(e)  No action may 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 under Section 372.013, Local Government Code, with the clerk of each county in which the district is located.

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

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

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

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

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

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

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

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

(f)  A purchaser is not entitled to recover damages under both Subsections (b) and (e), and entry of a final decision awarding damages to the purchaser under either Subsection (b) or (e) shall preclude the purchaser from recovering damages under the other subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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