

By: Creighton

S.B. No. 2024

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain procedural requirements for public improvement
3 districts and transfers of property located in public improvement
4 districts.

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

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

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

16 (b) Not later than the seventh day after the date the
17 governing body of a municipality or county adopts a resolution
18 under Subsection (a), the municipality or county shall file a copy
19 of the resolution with the county clerk of each county in which all
20 or part of the improvement district is located [~~An authorization~~
21 ~~takes effect when it has been published one time in a newspaper of~~
22 ~~general circulation in the municipality or county. If any part of~~
23 ~~the improvement district is located in the municipality's~~
24 ~~extraterritorial jurisdiction or if any part of the improvements is~~

1 ~~to be undertaken in the municipality's extraterritorial~~
2 ~~jurisdiction, the authorization does not take effect until the~~
3 ~~notice is also given one time in a newspaper of general circulation~~
4 ~~in the part of the extraterritorial jurisdiction in which the~~
5 ~~district is located or in which the improvements are to be~~
6 ~~undertaken].~~

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

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

15 (b) The service plan must:

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

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

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

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

26 (d) The governing body of the municipality or county [plan]
27 shall review and update the service plan [be reviewed and updated]

1 annually for the purpose of determining the annual budget for
2 improvements. The governing body may amend or update the plan only
3 by ordinance or order.

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

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

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

21 (a-1) The notice required by Subsection (a) shall be
22 executed by the seller and must, except as provided by Subsection
23 (b), read as follows [~~that reads substantially similar to the~~
24 ~~following~~]:

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

1 CONCERNING THE FOLLOWING PROPERTY [~~AT~~]

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

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

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

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

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

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

8 Date: _____

9 Signature of Purchaser

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

24 (c) This section does not apply to a transfer:
25 (1) under a court order or foreclosure sale;
26 (2) by a trustee in bankruptcy;
27 (3) to a mortgagee by a mortgagor or successor in

1 interest or to a beneficiary of a deed of trust by a trustor or
2 successor in interest;

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

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

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

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

14 (8) to or from a governmental entity; or

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

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

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

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

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

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

5 SECTION 4. Subchapter A, Chapter 5, Property Code, is
6 amended by adding Sections 5.0141, 5.0142, 5.0143, 5.0144, and
7 5.0145 to read as follows:

8 Sec. 5.0141. NOTICE REQUIRED BEFORE CONTRACT EXECUTION.

9 (a) The notice required by Section 5.014 shall be given to the
10 prospective purchaser before the execution of a binding contract of
11 purchase and sale, either separately or as an addendum or paragraph
12 of a purchase contract.

13 (b) In the event a contract of purchase and sale is entered
14 into without the seller providing the notice, the purchaser is
15 entitled to terminate the contract.

16 (c) If, however, the seller furnishes the notice at or
17 before closing the purchase and sale contract and the purchaser
18 elects to close even though the notice was not timely furnished
19 before execution of the contract, it shall be conclusively presumed
20 that the purchaser has waived all rights to terminate the contract
21 under Subsection (b) or recover damages or other remedies or rights
22 under Section 5.0145.

23 (d) Notwithstanding any provision of this section, Section
24 5.014, 5.0142, 5.0143, 5.0144, or 5.0145, all sellers, title
25 companies, real estate brokers, and examining attorneys, and any
26 agent, representative, or person acting on their behalf, are not
27 liable for damages under Section 5.0145, or for any other damages to

1 any person, for:

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

7 (2) unintentionally providing a notice that is not the
8 correct notice under the circumstances before execution of a
9 binding contract of purchase and sale, or at or before the closing
10 of the purchase and sale contract.

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

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

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

27 (b) Any information taken from the service plan as last

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

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

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

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

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

26 (e) No action may be maintained against any title company
27 for failure to disclose the inclusion of the property in a public

1 improvement district when the municipality or county has not filed
2 the service plan under Section 372.013, Local Government Code, with
3 the clerk of each county in which the district is located.

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

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

11 (2) for the purposes of the notice required by Section
12 5.014, the information in the service plan filed by the
13 municipality or county in effect as of January 1 of each year for
14 the period January 1 through December 31 of such calendar year.

15 Sec. 5.0145. SUITS FOR DAMAGES. (a) If any sale or
16 conveyance of real property within a public improvement district is
17 not made in compliance with Section 5.014, 5.0141, 5.0142, or
18 5.0143, the purchaser may institute a suit for damages under the
19 provisions of Subsection (b) or (e).

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

27 (c) The suit for damages under Subsection (b) may be

1 instituted jointly or severally against the person, firm,
2 corporation, partnership, organization, business trust, estate,
3 trust, association, or other legal entity that sold or conveyed the
4 property to the purchaser.

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

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

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

22 (g) The relief provided under Subsections (b) and (e) shall
23 be the exclusive remedies for a purchaser aggrieved by the seller's
24 failure to comply with the provisions of Section 5.014, 5.0141,
25 5.0142, or 5.0143.

26 (h) An action for damages does not apply to, affect, alter,
27 or impair the validity of any existing vendor's lien, mechanic's

1 lien, or deed of trust lien on the property.

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

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

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

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

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

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

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

22 SECTION 5. Section [372.010](#), Local Government Code, as
23 amended by this Act, applies only to a resolution adopted under that
24 section on or after the effective date of this Act. A resolution
25 adopted before the effective date of this Act is governed by the law
26 in effect on the date the resolution was adopted, and the former law
27 is continued in effect for that purpose.

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

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

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

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