

SUBJECT: Notice in real estate transactions concerning public improvement districts

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 8 ayes — Giddings, Elkins, Bailey, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

1 absent — Bohac

WITNESSES: None

BACKGROUND: Local Government Code, ch. 372 authorizes the creation of public improvement districts (PIDs) in municipalities and counties. The governing body of a municipality or county may undertake an improvement project that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction if the governing body finds that it promotes the interest of that municipality or county. The resulting PID may involve commercial or residential properties. The following is a partial list of improvements that a PID may include:

- landscaping;
- erection of fountains, distinctive lighting, and signs;
- acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or streets, any other roadways, or their rights-of-way; or
- the establishment or improvement of parks.

In undertaking such public improvements, the governing body of the municipality or county assesses a portion of the costs of improvements against properties within the PID. The governing body also can assess annually against the properties the costs of maintaining the improvements, over and above the municipality's or county's usual maintenance and repair costs.

The annual PID assessments must be paid yearly and concurrently with the ad valorem taxes assessed against the properties. If not paid timely, properties can accrue penalty and interest charges in the same manner as unpaid property taxes.

DIGEST:

HB 1919 would establish that a seller of residential real property located in a PID and consisting of not more than one dwelling unit — for example, a home, duplex unit, or dwelling unit in a multi-unit residential structure — would have to give the purchaser written notice that read substantially similar to the following:

“As a purchaser of this real property, you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a PID. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due date of that assessment may be obtained from the municipality or county levying the assessment. The amount of assessments is subject to change. Your failure to pay the assessments could result in foreclosure or a lien on the property.”

The notice would have to include the name of the municipality or county levying assessment, the street address of the property, and a line for the purchaser’s signature, all of which could be omitted if the notice were included as part of the executory contract or another notice.

The seller would have to deliver the required notice to the purchaser before the effective date of an executory contract binding the purchaser. The notice could be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivered to the purchaser. If an executory contract were entered into without the seller’s providing required notice, the purchaser could terminate the contract for any reason not later than the earlier of the seventh day after the date the purchaser received the notice or the date, as provided by the contract, that the transfer occurred. The purchaser’s right to terminate the executory contract would be the purchaser’s exclusive remedy for the seller’s failure to provide the prescribed notice.

The bill would not apply to a transfer:

- under a court order sale, foreclosure sale, or sale conducted under a power of sale under a deed of trust;

- by a trustee in bankruptcy;
- to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a grantor or success in interest;
- by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- from one co-owner to another co-owner of an undivided interest in the real property;
- to a spouse or a person directly related to the seller;
- to or from a governmental entity;
- of only a mineral interest, leasehold interest, or security interest; or
- of a real property interest in a condominium.

The bill would take effect January 1, 2006, and would apply only to an executory contract that was binding on a seller and purchaser on or after that date.

**SUPPORTERS  
SAY:**

HB 1919 would require a seller to notify in advance a prospective purchaser of residential property if the property were located a PID and thus subject to an additional assessment. Recently, some cities have received complaints from residential property owners in PIDs who were unaware that a yearly PID assessment was due in addition to property taxes.

Residential property developments that are within PIDs generally have a property owners' association that maintains private property improvements within the common areas of the development but does not care for additional amenities within the public property segments, such as landscaping and maintaining medians, maintaining gates within the public right-of-way, and maintaining decorative street lighting. Cities or counties care for such public improvements with the extra costs of upkeep — over and above the usual costs to maintain streets and rights-of-way — assessed annually, on a pro-rata basis, among the property owners within the PID. Customarily, a residential subdivision developer bears the capital costs of the public improvements and allows the PID to assess only the annual maintenance costs, above the ordinary municipal or county costs for upkeep. Complaints tend to occur only when residential property owners discover that their property tax notices include a \$200 PID maintenance assessment about which they had no knowledge.

In 1999, the 76th Legislature enacted HB 2224 by Solomons, which requires a seller of residential property subject to a property owners'

association to notify the purchaser of the existence of the association and of required, periodic assessments or dues. HB 1919 is patterned after this law and would use similar wording to require notification to a potential buyer of PID assessments. Like the current law governing notice about a property owners' association, the prospective purchaser's exclusive remedy for the seller's failure to provide the prescribed PID notice would be the purchaser's right to terminate the contract. By requiring sellers to notify prospective purchasers of PID obligations, the bill should eliminate buyers being caught off-guard by annual PID assessments.

OPPONENTS  
SAY:

The state currently has few PIDs, but if trends continue, PIDs likely will proliferate. As the number of PIDs increase, sellers may have more difficulty making sure that PID information was complete and up-to-date. Situations could arise in which sellers who wanted to comply with notice provisions in HB 1919 might not have the required information available, particularly if the seller had not received a prior PID assessment.

NOTES:

The committee amendment would change the effective date from September 1, 2005, to January 1, 2006, and apply the bill to only contracts that were binding on or after that date.

The companion bill, SB 1162 by Harris, has been referred to the Senate Intergovernmental Relations Committee.