

BILL ANALYSIS

Senate Research Center
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H.B. 1543
By: Parker (Creighton)
Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Municipal utility districts, commonly referred to as MUDs, are a type of real estate development tool successfully utilized in Texas for over 50 years to provide high quality and affordable homes to residential purchasers. Section 49.452, Texas Water Code, applies to MUDs, and includes extensive transparency guidelines regarding the responsibilities of parties selling homes within the boundaries of MUDs. This includes the MUD's obligation to record and update a "Notice to Purchaser" with the real property records regarding its tax rate. The home seller also has the obligation to obtain the recorded notice and provide it to the homebuyer both at time of contracting and the time of closing. The homebuyer is obligated to acknowledge receipt of the required notice, and at closing, the title company is required to record the buyer's acknowledgement. Penalties apply if the seller fails to meet its obligations, which include allowing the purchaser to terminate its contract up until closing and allow the purchaser to recover its damages.

Section 49.452, Texas Water Code, has proven effective at requiring timely and accurate disclosure to a homebuyer and imposes penalties for a party's failure to perform. This law has provided guidelines that protect the homebuyer and provide direction and certainty to the homebuilder.

Another development tool, known as public improvement districts or PIDs, are becoming increasingly common in Texas. However, the law regarding disclosure to the homebuyer merely requires the seller to provide notice to the purchaser at the time the purchase contract is entered. None of the other protections that apply regarding home sales in MUDs apply to home sales in PIDs.

H.B. 1543 proposes to place the same statutory obligations on parties to home sales in PIDs as those required for home sales in MUDs. The bill also imposes the same penalties on the seller in a PID as those applicable to MUDs. This bill is intended to increase transparency in PID transactions which will benefit both the homebuyer and the homebuilder.

This bill is identical to S.B. 2024.

H.B. 1543 amends current law relating to certain procedural requirements for public improvement districts and transfers of property located in public improvement districts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 372.010(a) and (b), Local Government Code, as follows:

- (a) Requires that a resolution authorizing an improvement district in accordance with a certain finding, except for a resolution authorizing a district described by Section 372.0035 (Common Characteristic or Use for Projects in Municipalities), provide that the authorization takes effect on the date the resolution is adopted.

(b) Requires the municipality or county, not later than the seventh day after the date the governing body of a municipality or county adopts a resolution under Subsection (a), to file a copy of the resolution with the county clerk of each county in which all or part of the improvement district is located. Deletes existing text providing that an authorization takes effect when it has been published one time in a newspaper of general circulation in the municipality or county. Deletes existing text providing that 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. Amends Section 372.013, Local Government Code, as follows:

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

(b) Requires that the service plan include a copy of the notice form required by Section 5.014 (Notice of Obligations Related to Public Improvement District), Property Code. Makes nonsubstantive changes.

(c) Requires the municipality or county, not later than the seventh day after the date the governing body of a municipality or county approves a service plan, to 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) Requires the governing body of the municipality or county to review and update the service plan, rather than requiring that the plan be reviewed and updated, annually for the purpose of determining the annual budget for improvements. Authorizes the governing body, except for the service plan for a district described by Section 372.0035, to amend or update the plan only by ordinance or order.

(e) Requires the municipality or county, 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, to 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. Amends Section 5.014, Property Code, as follows:

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT. (a) Requires a person who proposes to sell or otherwise convey real property, rather than a seller of residential real property, that is located in a public improvement district established under Subchapter A (Public Improvement Districts), Chapter 372 (Improvement Districts in Municipalities and Counties), Local Government Code, or Chapter 382 (Improvement Projects in Certain Counties), Local Government Code, to first give to the purchaser of the property the written notice prescribed by Subsection (a-1) or (a-2), as applicable. Deletes existing text providing that property is also required to consist of not more than one dwelling unit located in this state.

(a-1) Requires that the notice required by Subsection (a), except for the notice prescribed by Subsection (a-2), be executed by the seller and be composed of certain language. Sets forth the required language for the notice.

(a-2) Requires that the notice required by Subsection (a), for a district described by Section 372.0035, Local Government Code, be executed by the seller and be composed of certain language, except as provided by Subsection (b). Sets forth the required language for the notice.

(b) Authorizes the seller or the municipality or county that created the public improvement district to 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. Deletes existing text requiring the seller to 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. Deletes existing text authorizing the notice to be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser and existing text providing that 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 is authorized to be omitted.

(c) Deletes existing text providing that this section does not apply to the transfer of a real property interest in a condominium.

(d) Provides that for the purposes of this section, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring notice. Deletes existing text providing that if an executory contract is entered into without the seller providing the notice required by this section, the purchaser is authorized to terminate the contract for any reason not later than the earlier of the seventh day after the date the purchaser receives the notice or the date the transfer occurs as provided by the executory contract. Deletes existing text providing that 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. Amends Subchapter A, Chapter 5, Property Code, by adding Sections 5.0141, 5.0142, 5.0143, 5.0144, and 5.0145, as follows:

Sec. 5.0141. NOTICE REQUIRED BEFORE CONTRACT EXECUTION. (a) Requires that the notice required by Section 5.014 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) Provides that 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) Provides that 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 is required to 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) Provides that, 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 (Service Plan), 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.** Requires the purchaser to 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.** Requires that a separate copy of the notice required by Section 5.014 with current information, at the closing of purchase and sale, 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) Provides that, 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) Requires that 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) (relating to the requirements for delivery of a certain notice), be, for purposes of the notice required by Section 5.014, conclusively presumed as a matter of law to be correct.

(c) Provides that 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) Provides that 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) Prohibits any action from being 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) Provides that 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) Authorizes the purchaser, 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, to institute a suit for damages under the provisions of Subsection (b) or (e).

(b) Authorizes 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, to 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) Authorizes the suit for damages under Subsection (b) to 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) Requires that the amount of the damages, following the recovery of damages under Subsection (b), first be paid to satisfy all unpaid obligations on each outstanding lien on the property and the remainder of the damage amount to be paid to the purchaser. Requires the purchaser, on payment of all damages respectively to the lienholders and purchaser, to reconvey the property to the seller.

(e) Authorizes 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, to institute a suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

(f) Provides that 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) is required to preclude the purchaser from recovering damages under the other subsection.

(g) Requires that the relief provided under Subsections (b) and (e) 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) Provides that 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) Requires that a suit for damages under this section 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) Prohibits a purchaser, notwithstanding a provision of this section, from recovering 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) Requires a purchaser who purchases real property in a public improvement district and who then sells or conveys the property to, on closing of the subsequent sale or conveyance, be conclusively considered to have waived any prior right to damages under this section.

SECTION 5. Makes application of Section 372.010, Local Government Code, as amended by this Act, prospective.

SECTION 6. Makes application of 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, prospective.

SECTION 7. Makes application of Sections 372.013(d) and (e), Local Government Code, as added by this Act, prospective.

SECTION 8. Makes application of 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, prospective.

SECTION 9. Effective date: September 1, 2021.