

BILL ANALYSIS

Senate Research Center

H.B. 2033
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Natural Resources
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Engrossed

DIGEST AND PURPOSE

Under current law, water and sewer utilities provide service to customers upon prepayment of certain costs, including the cost of capital projects such as extension of distribution and collection lines, the expansion of well production capability, the construction of additional overhead storage, or the adjustment of a wholesale water or sewer contract to accommodate additional service demand. In some cases, individuals purchase lots for residential or commercial purposes without realizing that the extension of water or sewer services may require additional expense on the individual's part, and that there might be a delay in the utility's ability to provide the services. This is problematic in areas served by private utilities, nonprofit water supply and sewer service corporations, and special utility districts, which typically service areas outside a municipality's jurisdiction. Current law does not require that the purchasers of property receive notice about possible additional expenditures or delay in services. H.B. 2033 requires the notice to be provided to a purchaser of unimproved real property and gives the purchaser the option to recover certain damages if the notice is not provided by the seller.

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 Chapter 13G, Water Code, by adding Section 13.257, to read as follows:

Sec. 13.257. NOTICE TO PURCHASERS. (a) Provides that in this section, "utility service provider" means a utility, a water supply or sewer service corporation, or a special utility district organized and operating under Chapter 65.

(b) Requires a person, if the person proposes to sell or convey unimproved real property located in a certificated service area of a utility service provider, to give to the purchaser written notice as prescribed by this section. Provides that an executory contract for the purchase and sale of real property that has a performance period of more than six months is considered a sale of real property under this section.

(c) Provides that this section does not apply to certain transfers of title or interest.

(d) Requires the notice to be executed by the seller and requires the statement to read in a certain manner.

(e) Requires the notice to be given to the prospective purchaser before the execution of a binding contract of purchase and sale. Authorizes the notice to be given separately or as an addendum to or paragraph of the contract. Authorizes the purchaser, if the seller fails to provide the notice required by this section, to terminate the contract. Provides that if the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not

timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this section. Provides that notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for certain conditions.

(f) Requires the purchaser to sign the notice or the purchase and sale contract that includes the notice to evidence the purchaser's receipt of the notice.

(g) Requires that at the closing of the purchase and sale contract, a separate copy of the notice with current information to be executed by the seller and purchaser, acknowledged, and subsequently recorded in the real property records of the county in which the property is located. Provides that in completing the notice to be executed by the seller and purchaser at the closing of the purchase and sale contract, any seller, title insurance company, real estate broker, or examining attorney, or any agent, representative, or person acting on behalf of the seller, company, broker, or attorney, may rely on the accuracy of the information required by this chapter that is last filed in the real property records by the utility service provider and the accuracy of the map of the certificated service area of the utility service provider. Provides that any information taken from the map is, for purposes of this section, conclusively presumed to be correct as a matter of law. Authorizes any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder to rely on the map of the certificated service area filed in the real property records by the utility service provider.

(h) Provides that in completing the notice required to be given to a prospective purchaser before the execution of a binding contract of purchase and sale, any seller, and any person completing the notice on behalf of the seller, is authorized to rely on the information contained in the map of the certificated service area filed in the real property records by the utility service provider. Authorizes any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder to rely on the map of the certificated service area filed in the real property records by the utility service provider.

(i) Prohibits a purchaser, or the purchaser's heirs, successors, or assigns, if the notice is given at closing as provided by Subsection (g), from maintaining an action for damages or maintaining an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the Texas Natural Resource Conservation Commission (commission) by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. Prohibits an action from being maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the commission the map of the certificated service area.

(j) Provides that any purchaser who purchases real property in a certificated service area of a utility service provider and who subsequently sells or conveys the property is conclusively considered on the closing of the subsequent sale to have waived any previous right to damages under this section.

(k) Provides that it is the express intent of this section that any seller, title insurance company, examining attorney, vendor of property and tax information, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, attorney, vendor, broker, or lienholder, may for the purpose of completing the notice required by this section on the accuracy of the map of the certificated service area of the utility service provider filed in the real property records by the utility service provider.

(l) Authorizes the purchaser, except as otherwise provided by Subsection (e), if any sale or conveyance of real property within the certificated service area of a utility service provider fails to comply with this section, to file a suit for damages under Subsection (m) or (n).

(m) Provides that if the sale or conveyance of real property fails to comply with this section, the purchaser may file a suit for damages in the amount of all costs related to the purchase of the property plus interest and reasonable attorney's fees. Authorizes the suit for damages to be filed jointly or severally against the individual or entity that sold or conveyed the property to the purchaser. Requires the amount of the damages, following the recovery of damages under this subsection, to be paid first 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 each lienholder and the purchaser, to reconvey the property to the seller.

(n) Authorizes the purchaser, if the sale or conveyance of the property fails to comply with this section, to file a suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

(o) Prohibits a purchaser from recovering damages under both Subsections (m) and (n). Provides that an entry of a final decision awarding damages to the purchaser under either Subsection (m) or (n) precludes the purchaser from recovering damages under the other subsection. Provides that notwithstanding general or special law or the common law of this state to the contrary, the relief provided under Subsections (m) and (n) provides the exclusive remedy for a purchaser aggrieved by the seller's failure to comply with this section. Provides that any action for damages under this section 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.

(p) Requires a suit for damages under this section to be filed by the earlier of certain dates.

(q) Prohibits certain purchasers, notwithstanding any other provision of this section to the contrary, from recovering damages under this section.

SECTION 2. (a) Effective date: September 1, 2001.

(b) Provides that the change in law made by this Act applies only to a transfer of property that occurs on or after the effective date of this Act. Provides that for purposes of this section, a transfer of property occurs before the effective date of this Act if the contract of purchase and sale binding the purchaser to purchase the property was executed before that date.

(c) Makes application of this Act prospective.