

## **BILL ANALYSIS**

C.S.H.B. 4183  
By: Bell  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note the need to clarify certain matters relating to the authority of the Texas Commission on Environmental Quality over the issuance of bonds of certain water districts in order to provide for better efficiency and effectiveness. C.S.H.B. 4183 seeks to address this issue by setting out provisions relating to the administration of certain water districts.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4183 amends the Water Code to prohibit the Texas Commission on Environmental Quality (TCEQ), if TCEQ determines that an application for the approval of bonds of certain water districts complies with the requirements for financial feasibility and the district submitting the application is not required to comply with rules regarding project completion, from disapproving the issuance of bonds for all or a portion of a project or requiring that the funding for all or a portion of a project be escrowed solely on the basis that the construction of the project is not complete at the time of TCEQ's determination. The bill authorizes an application for the approval of bonds to include financing for payment of creation and organization expenses and establishes that expenses are creation and organization expenses if the expenses were incurred through the date of the canvassing of the confirmation election. The bill exempts the expenses from TCEQ rules regarding continuous construction periods or the length of time for the payment of expenses during construction periods.

C.S.H.B. 4183 requires TCEQ to approve an application to issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district if the application otherwise meets all applicable requirements for bond applications. The bill requires TCEQ to approve an application to issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities. If a district is approved for the issuance of bonds by TCEQ to use a certain return flow of wastewater, the approval applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

C.S.H.B. 4183 expands the type of changes for which a district's governing body may approve

change orders for applicable contracts to include certain changes the governing body determines are beneficial to the district and certain changes in the scope of work. The bill exempts a change order from certain advertising and competitive bid soliciting requirements. The bill removes the prohibition against the aggregate of change orders increasing the original contract price by more than 25 percent, removes the restriction on the issuance of additional change orders, and instead makes that restriction applicable to the aggregate of change orders that increase the contract price by more than 25 percent.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4183 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

SECTION 1. Section 49.105, Water Code, is amended by adding Subsection (e) to read as follows:

(e) Not later than the 30th day after the date the commission receives a request to appoint a director to fill a vacancy under this section, the commission shall respond to the request.

SECTION 2. Section 49.181, Water Code, is amended by amending Subsection (f) and adding Subsections (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), and (t) to read as follows:

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds.

The commission may not disapprove the issuance of bonds for all or a portion of a project or require that the funding for all or a portion of a project be escrowed on the basis that the construction of the project is not complete at the time of the commission's determination. The commission shall retain a copy of the order and send a copy of the order to the district.

#### **HOUSE COMMITTEE SUBSTITUTE**

No equivalent provision.

SECTION 1. Section 49.181, Water Code, is amended by amending Subsection (f) and adding Subsections (i), (j), (k), and (l) to read as follows:

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. If the commission determines that an application for the approval of bonds complies with the requirements for financial feasibility and the district submitting the application is not required to comply with rules regarding project completion,

the commission may not disapprove the issuance of bonds for all or a portion of a project or require that the funding for all or a portion of a project be escrowed solely on the basis that the construction of the project is not complete at the time of the commission's determination. The commission shall retain a copy of the order and send a copy of the order to the district.

(i) In reviewing an engineer's report submitted with an application for approval under this section, the commission shall give deference to the professional opinions and determinations of the licensed civil engineer who signed and sealed the application, the engineer's report, or documents included in the application or engineer's report.

(j) An application for the approval of bonds under this section may include financing for payment of creation and organization expenses. Expenses are creation and organization expenses if the expenses were incurred through the date of the canvassing of the confirmation election. A commission rule regarding continuous construction periods or the length of time for the payment of expenses during construction periods does not apply to expenses described by this section.

(k) The commission shall issue a notice of deficiency before issuing an order disapproving an application for expedited review of the issuance of bonds. The commission shall issue the notice not later than the 45th day after the date the application for expedited review is considered administratively complete. A notice of deficiency under this subsection must contain:

- (1) a description of the deficiency;
- (2) an explanation of the reasoning for the disapproval; and
- (3) a citation to the specific statute or rule that supports the reasoning for the disapproval.

(l) The commission shall issue a notice of deficiency before issuing an order disapproving the issuance of bonds to finance all or a portion of a project. In the event that the commission fails to issue the notice of deficiency, the commission may only disapprove the issuance of bonds if the project financed fails to meet the requirements for economic feasibility. The commission shall issue the notice of deficiency:

- (1) not later than the 90th day after the date the application for approval is considered administratively complete for an application for approval that qualifies for expedited review under commission rule; or
- (2) not later than the 45th day after the date the application for approval is considered

(i) An application for the approval of bonds under this section may include financing for payment of creation and organization expenses. Expenses are creation and organization expenses if the expenses were incurred through the date of the canvassing of the confirmation election. A commission rule regarding continuous construction periods or the length of time for the payment of expenses during construction periods does not apply to expenses described by this section.

administratively complete for an application for approval that does not qualify for expedited review under commission rule.

(m) A notice of deficiency under Subsection (l) must contain:

(1) a description of the deficiency;

(2) an explanation of the reasoning for the disapproval; and

(3) a citation to the specific statute or rule that authorizes the disapproval.

(n) A citation to this section or to 30 T.A.C. Section 293.43(6) is not sufficient for the purposes of Subsection (k) or (m).

(o) The district may respond to a notice of deficiency issued under Subsection (k) or (l) not later than the 10th day after the date the district receives the notice.

(p) On receipt of a memorandum and draft order issued by the commission recommending disapproval of the issuance of bonds to finance all or a portion of a project, the district may:

(1) concur with all or part of the recommendations;

(2) respond to the recommendations; or

(3) dispute all or part of the recommendations.

(q) If the district disputes a portion of the recommendation under Subsection (p), the commission shall provide for the escrow of the funding for the disputed portion. This subsection does not apply if the disputed portion of the financing would result in noncompliance with the commission's rules regarding economic feasibility.

(r) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district.

(s) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities.

(t) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval

(j) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district if the application otherwise meets all applicable requirements for bond applications.

(k) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities.

(l) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval

applies to subsequent authorizations unless the district seeks approval to use a different return flow of wastewater.

SECTION 3. Section 49.273(i), Water Code, is amended to read as follows:

(i) If changes in plans or specifications are necessary or convenient, as determined by the board,

after the performance of the contract is begun, or if it is necessary or convenient, as determined by the board, to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. A change order may be outside the scope of the original project.

The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less. The aggregate of the change orders that [may not] increase the original contract price by more than 25 percent[. Additional change orders] may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities. A change order is not subject to the requirements of Subsection (d) or (e).

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

SECTION 2. Section 49.273(i), Water Code, is amended to read as follows:

(i) If changes in plans, ~~[or]~~ specifications, or scope of work are necessary or beneficial to the district, as determined by the board, after the performance of the contract is begun, or if it is necessary or beneficial to the district, as determined by the board, to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes.

The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less. The aggregate of the change orders that [may not] increase the original contract price by more than 25 percent[. Additional change orders] may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities. A change order is not subject to the requirements of Subsection (d) or (e).

SECTION 3. Same as introduced version.