

BILL ANALYSIS

C.S.S.B. 2014
By: Creighton
Special Purpose Districts
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note the need to amend statutory provisions relating to the authority of the Texas Commission on Environmental Quality (TCEQ) over the issuance of bonds of certain water districts and statutory provisions relating to a city's consent to the creation of a municipality utility district to specify certain authority of TCEQ and the legislature. C.S.S.B. 2014 seeks to address these needs by amending such provisions.

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.S.B. 2014 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 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.S.B. 2014 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.S.B. 2014 expands the types 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.

C.S.S.B. 2014 authorizes TCEQ to approve the creation of a municipal utility district that includes any portion of the land covered by a city's consent to the district's creation. The bill authorizes the legislature to create and validate the creation of a municipal utility district that includes any portion of the land covered by a city's consent to the district's creation. The bill, for purposes of the authority of certain electors or land owners to petition the governing body of a city that fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a municipal utility district within a certain period and the authority of those electors or owners to request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district, specifies that such a district includes a district created by a special act of the legislature. The bill changes the condition under which an allocation agreement between a municipal utility district and a city is required to contain a method by which the district shall continue to exist following the annexation of all territory within the district by the city from the condition of the district being initially located outside the corporate limits of the city to the condition of the district being located outside the corporate limits of the city at the time the creation of the district is approved by the district's voters.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2014 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

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) 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.

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

No equivalent provision.

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

(i) If changes in plans, [ø] 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 1. Sections 54.016(a) and (f), Water Code, are amended to read as follows:

(a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls or, if there are more than 50 persons holding title to the land in the proposed district as indicated by the county tax rolls, the request to the city will be sufficient if it is signed by 50 holders of title to the land in the district. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition. If, at the time a petition is filed with a city for creation of a district, the district proposes to connect to a city's water or sewer system or proposes to contract with a regional water and wastewater provider which has been designated as such by the commission as of the date such petition is filed, to which the

SECTION 3. Sections 54.016(a), (b), and (f), Water Code, are amended to read as follows:

(a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls or, if there are more than 50 persons holding title to the land in the proposed district as indicated by the county tax rolls, the request to the city will be sufficient if it is signed by 50 holders of title to the land in the district. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition. If, at the time a petition is filed with a city for creation of a district, the district proposes to connect to a city's water or sewer system or proposes to contract with a regional water and wastewater provider which has been designated as such by the commission as of the date such petition is filed, to which the

city has made a capital contribution for the water and wastewater facilities serving the area, the proposed district shall be designated as a "city service district." If such proposed district does not meet the criteria for a city service district at the time the petition seeking creation is filed, such district shall be designated as a "noncity service district." The city's consent shall not place any restrictions or conditions on the creation of a noncity service district as defined by this chapter [~~Chapter 54 of the Texas Water Code~~] other than those expressly provided in Subsection (e) of this section and shall specifically not limit the amounts of the district's bonds. A city may not require annexation as a consent to creation of any district. A city shall not refuse to approve a district bond issue for any reason except that the district is not in compliance with valid consent requirements applicable to the district. If a city grants its written consent without the concurrence of the applicant to the creation of a noncity service district containing conditions or restrictions that the petitioning land owner or owners reasonably believe exceed the city's powers, such land owner or owners may petition the commission to create the district and to modify the conditions and restrictions of the city's consent. The commission may declare any provision of the consent to be null and void. The commission may approve the creation of a district that includes any portion of the land covered by the city's consent to creation of the district. The legislature may create and may validate the creation of a district that includes any portion of the land covered by the city's consent to the creation of the district.

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(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district, including a district created by a special act of the legislature, within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

(f) A city may provide in its written consent for the inclusion of land in a district that is initially located wholly or partly outside the corporate limits of the city that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the city, if the district is [~~initially~~] located outside the corporate limits of the city at the time the creation of the district is approved by the district's voters;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city; and

(4) such other terms and conditions as may be deemed appropriate by the city.

SECTION 2. The change in law made to Section 54.016(f), Water Code, as amended by this Act, applies only to an agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.

(f) A city may provide in its written consent for the inclusion of land in a district that is initially located wholly or partly outside the corporate limits of the city that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the city, if the district is [~~initially~~] located outside the corporate limits of the city at the time the creation of the district is approved by the district's voters;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city; and

(4) such other terms and conditions as may be deemed appropriate by the city.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.