

## **BILL ANALYSIS**

C.S.H.B. 4116  
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Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that disincentives are needed to help prevent effluent discharges that result in damage to the environment. C.S.H.B. 4116 seeks to address this issue by providing for a voluntary financial assurance program in an effort to help build a sense of trust between applicable permit holders and the local community.

### **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 rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4116 amends the Water Code to require the Texas Commission on Environmental Quality (TCEQ) to establish a program to allow the holder of a permit for the discharge of effluent into any body of water under the National Pollutant Discharge Elimination System (NPDES) to deposit with TCEQ an amount of money or evidence of equivalent financial assurance to be held by TCEQ to be used in the event the permit holder causes a discharge that violates the terms of an agreement under the program. The bill requires the program to require an agreement between the permit holder and interested parties in the community affected by the facility or proposed facility, authorizes the agreement to be entered into at any time before the issuance of the relevant NPDES permit, and sets out requirements relating to the contents of the agreement.

C.S.H.B. 4116 requires TCEQ to adopt rules necessary to implement the program, including establishing the types of financial assurance to be deposited. The bill requires the duration of the financial assurance to extend at least for the duration of the term of the discharge permit held by the permit holder, including any amendment. The bill authorizes money to be withdrawn from the financial assurance according to TCEQ rule if the permit holder does not comply with the agreement terms and requires the money to be deposited to the credit of the Texas water resources fund for use in the green project reserve program administered by the Texas Water Development Board. The bill establishes that a party to an agreement that is not a permit holder is an affected person for the purpose of provisions relating to action on certain permit applications. The bill authorizes the renewal of an NPDES permit that is the subject of an agreement under the program, in accordance with NPDES program requirements, to be the subject of a contested case hearing, including an agreement under which a complete drawdown of the financial assurance has occurred.

## **EFFECTIVE DATE**

September 1, 2019.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4116 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the type of discharge that triggers the use of the financial assurance under the program from a discharge that results in damage to the environment to a discharge that violates the terms of an agreement between the permit holder and affected interested parties in the community.

The substitute does not include a specification that the financial assurance held by TCEQ is held in escrow. The substitute does not include provisions providing for TCEQ establishment of a standard escrow agreement and related terms and for a procedure for withdrawing money or using financial instruments held in escrow to pay for damage remediation. The substitute does not include a requirement for TCEQ to hold a public meeting to present information about the program and the permit holder's participation.

The substitute requires the program instead to require an agreement between the permit holder and affected interested parties in the community and includes provisions relating to such an agreement. The substitute also includes provisions:

- providing for the duration of the financial assurance;
- providing for the withdrawal of money from the financial assurance for noncompliance with an agreement and the deposit of that money;
- establishing the status of a party to an agreement as an affected person for certain purposes; and
- authorizing the renewal of an NPDES permit that is the subject of an agreement to be the subject of a contested case hearing.