

THE MONITOR



A week of STEM returns to Edinburg
UT Rio Grande Valley's 14th annual HESTEC focuses on science and technology in education.
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Helping kids eat healthy
EDITORIAL: Healthy, Hunger-Free Kids Act should be reauthorized.
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Crucial Cruz
Kayla Cruz key for McAllen Row's volleyball defense.
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McAllen | School board

Trustees: Rumors about IB funding are incorrect

BY DANIA PEREZ-HERNANDEZ
STAFF WRITER

McALLEN — Rumors that McAllen school district is doing away with full-scale International Baccalaureate programs at the elementary and middle school level are inaccurate, several McAllen school board members said Monday.

The issue, which has had McAllen parents mobilizing all weekend to protest, was fueled further after Monday's board agenda only included approval for funds for Lamar Academy.

With a unanimous 6-0 vote, the board approved \$80,233 from the district's general fund to pay for the program at Lamar Academy, which would only cover ninth through twelfth grades. But the vote did not happen before board members heard from at least eight area residents all of ages, who pleaded for no cuts in the program.

"The things that I have been able to accomplish in college would not have been possible would I not have gone to the IB program," said Aaron Barreiro, 22, an IB graduate now employed by South Texas College at the meeting. "I have seen the successes. ... We cannot afford to take away that education."

But board members

See RUMORS | 5A



IDEA
Future home of
IDEA HEADQUARTERS
COMING SOON

Photos by Nathan Lambrecht | [nlambrecht@mcmonitor.com](#)

The unfinished headquarters for IDEA Public Schools sits behind a fence Friday in Weslaco, Texas. Descon was the contractor in charge of building the facility until they went bankrupt, halting the project early in the summer.

Struggling contractor hit with civil lawsuits

More than two dozen Texas Descon projects named in court cases

BY KRISTEN MOSBRUCKER
STAFF WRITER

McALLEN — In the past few weeks, three insurance bond companies have filed lawsuits against a local construction firm after it lost control over dozens of projects across South Texas worth more than \$100 million this year — nearly all paid for through public funding.

These companies are brought in to insure the completion of public works projects by stepping

See DESCON | 4A



A man looks over the unfinished IDEA Public Schools headquarters Friday in Weslaco.

Plan for floodway running from Edinburg to Laguna Madre on hold

BY FERNANDO DEL VALLE
STAFF WRITER

RAYMONDVILLE — More questions are delaying plans to proceed with a \$340 million project to build a regional floodway. Yesterday, Wilacy County commissioners met with other officials to enter into an agreement with Hidalgo County Drainage District No. 1, and the Delta Lake irrigation district.

But commissioners held off on action to go ahead with the project, which would turn the so-called



Raymondville drain into Laguna Madre.

"These are lots of questions," Commissioner

Officials are planning to clear a stretch of the Raymondville dike in northern Cameron County. Officials hope to widen and extend the dike to create a floodway stretching from Hidalgo County to the Laguna Madre.

Fernando Del Valle | [Valley Morning Star](#)

Fred Serrano said after the meeting. "We're going to see what we can work out."

Officials said they sought an agreement to help fund the project. "I would like to know how much money we're going to spend," Serrano said.

The Hidalgo County Drainage District has set aside \$110 million for the project after the county's voters approved a bond issue in 2012.

But officials continue to seek federal money to build the floodway.

Officials have planned to fund the project through federal Water Resources

See FLOODWAY | 5A

McAllen adopts \$112M budget

City raises water and sewer rates

BY KRISTEN MOSBRUCKER
STAFF WRITER

McALLEN — The McAllen City Commission approved a rate hike for water and sewer as well as an across-the-board spending cut on Monday as part of adopting its \$112 million fiscal 2016 budget.

With Commissioner Trey Poley absent, the rest of the commission voted in favor of the hike, which will affect an estimated 40,000 rate payers. The budget also includes a 3 percent pay hike for all city employees.

"Our City leaders have always been mindful of the balance between providing quality services and quality of life and the burden on the taxpayer" Mayor Jim Darling said of the budget. "We are proud of our low tax rate and great services. This budget is an example of our continued commitment to both."

The rate hike is a reflection of the drop in demand for water over the past two years.

"This one is not for debt service. It has to do with all the utility departments took a significant loss to their revenues," said Mark Vega, director of the McAllen Public Utility Commission.

The city undertook a \$56 million renovation to its south Wastewater Treatment Plant recently, but the 2005 water and sewer bond was also refinanced



See BUDGET | 5A

Residential water & sewer base rates

City	Water	Sewer
McAllen	\$7.95	\$10
Mission	\$9.22	\$7.95
Edinburg	\$10.78	\$8.05
Pharr	\$16.50	\$1.50
San Juan	\$12.05	\$1.10

TODAY'S WEATHER | 2A
Partly sunny
HIGH 95
LOW 74

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4A

The Monitor, www.themonitor.com | TUESDAY, SEPTEMBER 29, 2015

Senate advances stopgap spending bill to avoid shutdown

Chamber is expected to approve bill today, send it to House

BY ANDREW TAYLOR
THE ASSOCIATED PRESS

WASHINGTON — The Senate on Monday delivered a strong vote of confidence to a bipartisan spending bill that's needed to head off a government shutdown at midnight Wednesday.

The 77-19 vote powers the measure past a filibuster by some of the chamber's most

ardent conservatives, who were angered that Majority Leader Mitch McConnell, R-Ky., stripped a provision that would cancel federal funding of Planned Parenthood in exchange for keeping the government open.

McConnell is under fire from tea party voters who demand that he fight harder against Planned Parenthood — even at the risk of a partial government

shutdown — but McConnell is more concerned with protecting his 2016 re-election class from political damage if Republicans are blamed for a shutdown.

Last week, Democrats led a filibuster of a Senate stopgap measure that would have defunded Planned Parenthood. Eight Republicans did not support that measure, leaving it short of a simple majority, much less the 60 votes required to overcome the filibuster.

The current bill is "the only viable way forward in the short term," McConnell

said. "It doesn't represent my first, second, third or 23rd choice when it comes to funding the government, but it will keep the government open through the fall."

The Senate is expected to approve the bill today and send it to the House. The White House endorsed the measure since it would allow "critical government functions to operate without interruption, providing a short-term bridge to give the Congress time to pass a budget for the remainder of the fiscal year."

The Planned Parenthood fight helped topple House Speaker John Boehner, who announced his resignation last week after informing several conservatives that he would not use the must-pass spending measure to take on the group.

The measure would keep the government's doors open through Dec. 11, but the bill is sure to be rejected there — at a potentially greater risk of a shutdown. Republican presidential candidate Ted Cruz served notice that he will be part

of that fight. The Texas lawmaker assailed his GOP leadership, saying it is "reflexively surrendering at the outset," while complimenting Democrats for their willingness to "crash on broken glass with a knife between their teeth" to fight for their policies.

Republicans have targeted Planned Parenthood for years, but the release of secretly recorded videos that raised questions about its handling of fetal tissue provided to scientific researchers has outraged anti-abortion Republicans.

DESCON

From Page 1A
in and taking over the project when it is no longer is viable, then attempt to collect from the original contractor hired to complete the works project.

"They may be saying, 'We want you to put up more collateral,' but it's highly unlikely there's any money there to do it," said Wes Johnson, Gardner Law Firm president and CEO based in San Antonio, in describing the motivation of some of these investors.

Since one local school district voted to terminate its contract with Texas Descon, a family-owned, McAllen-based construction company, in late July the insurance companies that backed the firm's work on two dozen projects have stepped in and the fall out for subcontractors continues.

Some construction projects remain in limbo while the bonding companies trace the Texas Descon money trail.

Insurance Group, based in Massachusetts, was the surety or bond company, which secured projects like the new \$12.8 million IDEA school district headquarters in Weslaco, a \$12.8 million expansion of Edinburg's water plant, and even \$2.8 million worth of logistics for a Colombian firm.

The new administration building and IDEA school headquarters is now under the control of the bond company and are under construction, but the site was quiet last Friday afternoon.

So far, the surety company reported that it paid \$4.9 million in claims on Texas Descon's behalf, according to court records.

"Hanover has received claims from subcontractors and suppliers of Texas Descon, as well as the City of Edinburg on the WTP (water treatment plant) expansion project," wrote Emily Treviño, spokeswoman for Hanover Insurance Group. "Hanover is expeditiously responding to claims in accordance with its payment and performance bonds and Texas law."

Hanover Insurance Group questioned the validity of \$1.4 million paid by the Colombian com-

pany, Operadora Logística de Santa Marta SAS, to Texas Descon and suggested that the payment for construction work was furnished away from the subcontractors and to Descon's principal owner, Doug Smith.

The surety has been unable to identify or track application of the \$1.4 million of funds on the project and, consequently, believe such funds may have been diverted by the principal," according to the court case.

But tucked inside a non-descript office space along North 10th Street, the office of Texas Descon Construction LP seemed to be quiet on a recent weekday afternoon. Texas Descon's owners and its attorneys did not respond to requests for comment on this story despite emails, calls and a visit to the company's office.

Large Portfolio
"Many times when the surety comes in to fulfill the obligations they will re-

contract with the same subcontractors in order to get the work done," Johnson, the San Antonio attorney said.

Texas Descon likely was able to secure so many projects because of its large portfolio of work that spanned across South Texas, but typically bond companies don't end up

following the bill, he said. "They may bond a lot of jobs for a lot of money because they are not planning on paying off the projects, but to collect premiums," he said.

One possibility is that Texas Descon underbid on its projects or under-estimated how much the construction would really cost.

"Just like the Ballenger case — we usually have one every so often — these guys get into something and it goes wrong, they just go down," he said about another construction firm that filed for bankruptcy a few years ago.

The scale of the Texas Descon defaults is similar to when highway construction firm, Ballenger Construction Company, filed for Chapter 11 bankruptcy in 2012. Ballenger defaulted on 22 projects statewide with about \$50 million worth of liabilities and more than 1,000 creditors.

But Texas Descon has not filed bankruptcy; a separate construction company controlled by the Smith family called Descon Construction LP did file bankruptcy in May.

Documents for Texas Descon and Descon Construction list separate officers and the same business address with different suites — Descon 45 LLC lists ownership by both Michael D. Smith and Michael C. Smith — a father and son.

Michael Charles Smith founded Descon Construction LP in the 1980s. His son, Michael Douglas Smith or Doug Smith, took over the business and started Texas Descon in the mid-2000s. Amelia Smith is Doug's mother



A sign for Texas Descon is seen in front of the future IDEA Public School headquarters Friday in Weslaco.

and she still works for Texas Descon, according to emails obtained by The Monitor.

"In 2006, Texas Descon LP entered into an arm's-length transaction where-

by it purchased from the surety certain assets and good-will of Descon Construction LP," wrote Robert M. Smith, an attorney for Texas Descon, after requests for comment about the nature of the relationship between the two firms.

"Texas Descon LP did not acquire any partnership interest in Descon Construction LP and it did not agree to assume any liabilities of Descon Construction LP," Smith continued.

So when Descon Construction filed for Chapter 11 bankruptcy, which was recently converted to Chapter 7, it had no employees, no assets and no money to pay potential creditors. The move came weeks after the Rio Grande City school district filed a lawsuit against Descon Construction for issues with La Cruzita High School. But the bankruptcy case is still winding its way through the court system and a trustee has been appointed to determine how much creditors may be owed.

Projects in Limbo
In the meantime, Texas Descon's projects across the Rio Grande Valley are in various levels of completion.

The Edinburg city council voted to terminate its contract with Texas Descon in August, but the project had barely started officials said. The City of San Juan accepted a letter of voluntary default this summer and the Pharr San Juan-Alamo school board also voted to terminate four renovation contracts and is working with a project that's only half-way done.

Each bond company has stepped in to take over and some have appointed new general contractors to finish the job within the budget.

But some projects Descon has already largely been completed, like in Pharr and Roma.

"We're fortunate enough to be pretty far along in the project," said Raul Garza, grants management and

community development director for the City of Pharr. A \$700,000 special needs playground near Eldora Road and Raider Drive across from an elementary school is about 95 percent complete, he said.

But its under a year away from completion. The school district is still in the process of identifying all the subcontractors and setting up interviews to determine if they have been paid in full," Garza said.

In Roma, the \$14 million Veterans' Memorial Elementary school began construction in early 2013 and students filled the classrooms last year. The school's completion, school officials said.

"It's been completed, but the only thing that happened is that the subcontractors did not get their retainage," said Alfonso Perez, business manager for Roma ISD. That's only about \$120,000 still in limbo, he said.

"All the subcontractors that were not paid were given the bond company information," Perez said.

Bond Companies Fight
Zarich, North America, the parent company of Fidelity Insurance and Deposit Company of Maryland, which backed most of the Pharr San Juan-Alamo school district projects, said they had policy limitations about discussing the projects.

"These are active issues that we are addressing with our customer," wrote Robyn Zerger, spokeswoman for Zarich North America. "As a matter of policy, we are unable to provide you any information related to your questions."

In the meantime, subcontractors who had agreements with Texas Descon may be out of luck.

"It's tough, the sureties are imposing arbitration position — where you have to hire a private judge and pay a fee to essentially adjudicate," said Chuy Ramirez, attorney for Pharr-San Juan-Alamo school district, who also

represents a subcontractor on a different Texas Descon project.

"The problem is that if the claim is relatively small, the cost of arbitration exceeds the cost of the claim, so there is little motivation for the sub to go through with it," Ramirez said.

But at the school, students are back to class — though some are still learning inside temporary classrooms at Alamo Middle School, for example. There are a few new contracts signed with the new general contractor that took over after Texas Descon was dropped from the school projects, he said.

"The surety has taken over the job. They are meeting with the subcontractors. There's ground to take over agreements between the district and the surety's completion contractor. It appears that the district is going to get their projects completed," he said.

The Guarantee Company of North America, which backed the San Juan water plant project, filed a lawsuit at the end of July.

"We are currently conducting our investigation to determine our rights and duties under the bond," wrote Jeffrey Ibarra, vice president of claims and general counsel for The Guarantee Company. "These are active issues that we are addressing with our customer, and as a matter of policy we are unable to provide you any information related to your questions."

But in court records, the bond company demanded in a late July lawsuit that Texas Descon explain how it used more than \$300,000 in payments from the city of San Juan for the water plant and the San Diego ISD school district.

The bond company alleged in its lawsuit that, by mid-July, \$577,022 worth of funds meant to pay \$564,881 to subcontractors was not adequately accounted for, according to court documents.

In total, the bond company said it got claims of more than \$1 million for a San Diego ISD project and \$161,194 from the San Juan project. The company said that subcontractor claims

escalated in May and June of this year and it prompted the firm to schedule a meeting with Texas Descon. But the bond company alleges that about a month later, the vendors were still not paid.

"Texas Descon did produce an updated accounts payable ledger to GCNA, but the ledger showed that Descon had not paid any of the subcontractors and suppliers listed in the June 23rd email," wrote Weinstein, the bond company's attorney.

In turn, the bond company told Texas Descon to post \$300,000 collateral to cover the claims on July 17, but said that was not done. As a result, they claim Texas Descon breached its contract when it failed to deposit the collateral money. The company then requested access to the construction company's bookkeeping records and increased the minimum collateral amount to \$1.25 million.

Schools Behind
Most of the public schools projects were secured by Hanover Insurance Company and one more was listed on Zarich's court case.

IDEA had contracted several projects with Texas Descon in the past year, but half of the six projects are now under the management of the bond company. The rest were awarded to different contractors after Texas Descon.

That included a \$10.4 million secondary school called Carver Park, paratory in San Antonio, which began ground last October. Now nearly a year later, it's still under construction and the completion date has not yet been determined.

"Construction on two school projects has now been assumed by the Surety contracted by Texas Descon," wrote Wyatt Truchette, chief financial officer for IDEA school district.

Students scheduled to attend the Carver campus are temporarily sharing space with IDEA's facade, about two miles away in San Antonio, that opened on Aug. 24 of this year. But even that school wasn't yet completed by Texas Descon — another \$9.4 million project.

"However, three continues to be construction activity at that site (IDEA facade) in order to fully complete the project," Truchette continued. "To the best of our knowledge, all subcontractors have been paid by Texas Descon, IDEA Public Schools, or the Surety, for all work performed, assuming all work was completed timely and with appropriate quality standards."

One project dubbed, "Monterey Park Phase II" was listed to cost \$5.1 million, while the Water's Edge School Project was set to cost \$8.7 million.

"Any construction projects for 2016-17 openings previously awarded to Texas Descon have now been awarded to other contractors," Truchette wrote.

kmstruck@themonitor.com

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