

SUBJECT: Allowing supplemental environmental projects in Mexico

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Chisum, Allen, Culberson, Dukes, Howard, Kuempel, Palmer, Zbranek

1 nay — Talton

WITNESSES: For — None

Against — None

On — Jim Phillips, Texas Natural Resource Conservation Commission

BACKGROUND: Once the Texas Natural Resource Conservation Commission (TNRCC) brings an enforcement action against a business or other entity that violates an environmental law or agency rule, the agency may compromise, modify, or remit administrative penalties based on various factors. One factor that TNRCC may use to determine the appropriate amount of a penalty for an alleged violation is the violator’s willingness to contribute to Supplemental Environmental Projects (SEPs) approved by TNRCC.

The Water Code defines SEPs as projects that prevent pollution, reduce the amount of pollution reaching the environment, enhance the quality of the environment, or contribute to public awareness of environmental matters.

DIGEST: CSHB 3570 would allow TNRCC to approve an SEP to be carried out in Mexico if the project substantially benefitted territory in Texas.

The commission could not approve an SEP:

- ! that was necessary to bring a respondent into compliance with environmental laws;
- ! that was necessary to remediate an environmental harm caused by the alleged violation; or
- ! for which the project activities would take place at a location that was more than 50 miles from the location of the alleged violation or of the

environmental harm caused by that alleged violation.

CSHB 3570 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

By giving TNRCC statutory authority to allow SEPs to be carried out in Mexico, CSHB 3570 could increase the benefits of these projects for Texas residents. In some cases, an environmental project carried out in Mexico may have a greater benefit for Texas residents than a project in Texas.

Both sides of the Texas-Mexico border form an inseparable community that share the same air and water resources. The federal Environmental Protection Agency (EPA) has acknowledged that El Paso's airshed is affected strongly by air pollution and particulate matter from Juarez.

For example, a metal refining company like ASARCO, which operates a smelter in El Paso, might be able to help El Paso's air pollution problems dramatically by paving roads in Juarez. EPA has designated El Paso as a nonattainment area for particulate matter, and much of that dust and other particulate matter comes from across the border.

Assuming a favorable exchange rate, the same dollar amount could support a much bigger project in Mexico than in the United States. TNRCC would supervise closely any SEP carried out in Mexico. CSHB 3570 would require such a project to benefit Texas substantially, so the agency would reject projects of questionable benefit.

**OPPONENTS
SAY:**

TNRCC should not be allowed to approve projects in a foreign country that would use money designated for state coffers. There is no guarantee that the agency could oversee a project in Mexico and make sure the money was spent effectively. There is no need to cross an international border to find environmental problems, as Texas has plenty of those that could benefit from environmental projects.

**OTHER
OPPONENTS
SAY:**

The bill should be amended to delete the provision that would prohibit TNRCC from approving project activities a location more than 50 miles from the location of the alleged violation or the environmental harm caused by the alleged violation.

Environmental problems are not limited by mileage, as Texans saw last

summer when smoke from fires in Central America and Mexico blanketed south and central Texas. Indeed, some water-quality projects could benefit cities 50 miles downstream of where they were carried out more than they would benefit the immediate location. The arbitrary mileage limit in CSHB 3570 would be insensitive to the realities of environmental problems, which can migrate quickly without regard to distance or borders.

The bill should prohibit any project more than 50 miles inside Mexico, however, to ensure that projects would not be difficult to oversee from this side of the border.

NOTES:

The committee substitute included a provision not found in the original bill that would prohibit TNRCC from approving project activities taking place at a location more than 50 miles from the location of the alleged violation or the environmental harm caused by the alleged violation.

The companion bill, SB 828 by Shapleigh, which is identical to the original version of HB 3570, passed the Senate on May 3 and was referred to the House Environmental Regulation Committee.