

SUBJECT: Continuing TNRCC authorization to fund the Clean Rivers Act

COMMITTEE: Natural Resources — favorable, with amendments

VOTE: 7 ayes — Counts, Walker, Cook, Corte, King, Moffat, Puente
0 nays
2 absent — Culberson, R. Lewis

WITNESSES: For — Ronald Glenn, Red River Authority; Tom Ray, Brazos River Authority; Gary Neighbors, Angelina-Neches River Authority; W.E. Bill West Jr., Guadalupe-Blanco River Authority; Mark Rose, Lower Colorado River Authority; Frank Sturzl, Texas Municipal League; Gary Joiner, Texas Farm Bureau; Carolyn Johnson, Dow Chemical and Texas Chemical Council; Dwayne Hargesheimer, Texas Municipal Utility Association; George Cason

Against — Ken Kramer, Sierra Club; Dwayne Anderson, Clean Water Action; Mary Arnold, League of Women Voters

On — Ronald Schultz and Jean Wright, Galveston County Health District; John Williams, Canadian River Authority

BACKGROUND : The Texas Clean Rivers Act of 1991 requires the Texas Natural Resource Conservation Commission (TNRCC) to conduct water quality assessments for each watershed and river basin in Texas. The TNRCC is directed to impose fees on water and wastewater permit holders to fund the program. The amount of fees collected by TNRCC for the program is capped at \$5 million annually.

Water quality assessments, conducted in every river basin in Texas, are performed by river authorities, TNRCC and other entities. TNRCC is required to contract with river authorities for the assessments to the “greatest extent possible,” and to summarize the basin-wide assessments every two years in a comprehensive report. To coordinate assessments, each river authority is required to organize a basinwide steering committee composed

of all appropriate state agencies, the State Soil and Water Conservation Board, political subdivisions and other persons.

In 1995, the 74th Legislature enacted HB 1385 by Saunders, which will eliminate the TNRCC's authority to assess fees for the Clean Rivers Program after August 31, 1998, and requires TNRCC to submit to the Legislature a written report on the costs of the program by December 31, 1998.

DIGEST: HB 1190, as amended, would delete the provision that ends TNRCC's authority to assess fees to fund the Texas Clean Rivers Program after August 31, 1998, and would require TNRCC to establish rules for river authorities participating in the program. The bill would also remove a statutory requirement that certain cities establish water pollution control and abatement programs.

The Clean Rivers Program. Funding for the Texas Clean Rivers Program would continue under HB 1190, as amended. TNRCC would be directed to “equitably apportion” the funds collected from water user and wastewater permit holders among river basins. Only river authorities that have contracts with the state to do an assessment would be required to monitor water quality in their watersheds, and Clean River funds could only be used for watershed monitoring and assessment of water quality.

TNRCC would be required to consider the data collected during watershed assessments when developing stream standards, reviewing wastewater permits and conducting other water quality management activities. The bill would require the commission to adopt rules setting certain requirements for river authorities participating in the Clean Rivers Program, including the development of a process to encourage public participation.

Under the bill, the basinwide steering committees organized by the river authorities to help coordinate and develop Clean River Programs would also include the water and wastewater permit holders who pay fees to support the program and private citizens. The bill would specify that steering committees would not be subject to Art. 6252-33, which concerns state advisory committees. Each steering committee would be required to develop water quality objectives, which then would be used to allocate resources and develop work plans.

Each river authority would be required to submit a report, approved by its basinwide steering committee, assessing the water quality of its watershed to the TNRCC, the State Soil and Water Conservation Board and the Parks and Wildlife Department. The bill identifies various subjects to be covered in the report, including specific local water quality problems. Some current report requirements would be deleted, including a provision stipulating that reports include reviews of any significant regulatory or enforcement issues affecting the watershed. River authorities would also be required to help the commission prepare its biennial report on the costs of the program.

Once a summary report was submitted to the agencies, each river authority would hold committee meetings and invite fee-paying water users and wastewater permit holders in their watershed to review a draft of the report. Their comments would be summarized and submitted along with the report to the governor, the lieutenant governor, and the speaker of the House no later than 90 days after the report was submitted to the commission.

HB 1190 would direct the commission to orient its water quality management functions on a watershed basis, taking into consideration the priorities identified by river authorities and basin steering committees.

The commission would also be required to establish rules to maximize use of state and federal water quality funds for the commission's water quality programs and use the data collected to satisfy state and federal reporting requirements.

Municipal water pollution control and abatement programs. The bill would delete a provision in the Water Code that requires cities with populations of 5,000 or more to establish a water pollution control and abatement program. All cities would be allowed, rather than required, to establish such a program.

TNRCC could require cities with populations of 10,000 or more to establish a water pollution control and abatement program if assessments identified water pollution from non-permitted sources. The TNRCC would first have to give the city a reasonable time to correct the problem and then hold a public hearing before requiring it to establish such a program. The

commission would be permitted, rather than required, to recover the cost of performing these oversight functions.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

Clean Rivers Program Provisions. HB 1190 is necessary to continue funding for the Clean Rivers Program. Policy decisions concerning water resources are of questionable value without the kind of basic water data that are collected under this program. At a time when state officials are considering a comprehensive water bill, the collection of accurate water data is especially crucial.

Under HB 1190, water rights and discharge permit holders would finally see a concrete benefit from the fees they have paid since 1991 because the information they are paying to have collected would actually be used to set stream standards and permit effluent limits. The bill is the result of extensive negotiation by a Clean Rivers Program stakeholders group, made up of representatives from cities, river authorities, industry, business, agricultural and environmental interests, which reached a consensus on the issues concerning the continuation of the clean rivers program. In October, the House Joint Committee on TNRCC Funding recommended that the Legislature consider the statutory changes to the Clean Rivers Act recommended by the group and incorporated in HB 1190.

Requiring TNRCC to “equitably apportion” Clean River funds would make distribution of funding for the program more fair. Currently, urban areas pay a disproportionate amount of Clean River fees because water and wastewater permits tend to be concentrated in big cities and industrial centers like Houston-Galveston, Dallas-Ft. Worth and Corpus Christi. HB 1190 would ensure that fees from regional assessments were properly allocated to provide adequate funds to perform the assessments in each region.

Water quality assessments should not be required to include a review of regulatory and enforcement issues affecting the watershed. To make an accurate watershed assessment, river authorities must have the full cooperation of cities and other permit holders in their area. Cooperation is

diminished if permit holders know the authorities are required to report on regulatory and enforcement issues.

Requiring that Clean River assessment data be used to satisfy both state and federal reporting requirements would help to satisfy reporting requirements more quickly and efficiently. Furthermore, if river authorities helped TNRCC prepare the biennial report on the costs of the program, the commission could finish the report in a timely manner. Without data submitted from the river authorities, it is impossible to estimate program costs.

Municipal water pollution control and abatement program provisions.

The bill would provide relief for cities with populations over 5,000 from having to develop water pollution control and abatement programs, absent any evidence of need. Less than a dozen cities in the state have developed such programs, and they could easily continue their programs on a voluntary basis if HB 1190 were enacted. This is an unfunded mandate on cities that is so broad, costly and unenforceable that TNRCC never even promulgated rules concerning the section and has never brought an enforcement action against a city for not having a program.

It is unreasonable to require financially strapped cities to have a costly nonpoint source pollution program if that city has no water quality problems. Under HB 1190, the commission would have the authority to require any city with a population over 10,000 to establish a water pollution control and abatement program to remedy any problems.

Although there is now insurmountable opposition to TNRCC's making rules under the section as it currently stands, if HB 1190 is enacted, the agency would be able to proceed with rulemaking.

Cities are already struggling to comply with a variety of expensive federal mandates concerning air and water pollution. Indeed, the federal government is poised to extend federal stormwater runoff requirements to cities with populations under 100,000 that will require many to implement costly nonpoint water pollution programs in the future. There is no reason to burden Texas cities with such requirements in advance of the federal program.

OPPONENTS
SAY:

Municipal water pollution control and abatement program provisions.

While continued funding for the Clean Rivers Program is vital, the good that would come from this part of HB 1190 would be overshadowed by the other provisions in the bill that would remove the only specific requirement in the Water Code that Texas cities control or prevent nonpoint source pollution problems.

It is essential that the state begin to tackle nonpoint source water pollution, since point source pollution from industries, agriculture and cities is already highly regulated. It has been estimated that nonpoint source pollution accounts for over half of the water pollution in Texas.

Nonpoint source pollution must be controlled primarily at a local level, and HB 1190 would remove the state mandate that gives impetus to local programs. Many things that cities do to help prevent nonpoint source pollution (like educating people not to pour their used oil down sewers) are preventive in nature and relatively inexpensive. Preventing nonpoint source pollution in the first place is much more more cost effective than cleaning it up afterwards.

Citizens have made it clear in recent polls that they want water pollution control, even if it costs a few more dollars. Cities could meet the current statutory requirements of Water Code sec. 26.177 through regional cooperative efforts, reducing the cost of such programs.

Galveston County, San Antonio, Austin and other cities have established nonpoint source pollution programs under existing laws. Although cities could still have these programs voluntarily under HB 1190, the lack of a mandate might make it problematic that cities would continue such a program at a time when they are looking to cut costs.

OTHER
OPPONENTS
SAY:

Clean Rivers Act provisions. Under HB 1190, water quality assessments would no longer be required to include a review of any significant regulatory or enforcement issues affecting the watershed. This information should continue to be included in assessments since it is important for TNRCC and state officials to know what is going on in the river basin.

Municipal water pollution control and abatement program provisions.

Instead of doing away with the statutory requirement for nonpoint source pollution programs in cities of over 5,000, the requirement could be altered to apply only to cities over 10,000, so smaller cities with fewer resources would not be unduly burdened.

NOTES:

The committee amendments provide that state and federal funding should be used for *the commission's* water quality programs in order to distinguish TNRCC programs from State Soil and Water Conservation Board programs, and would clarify that water quality data would come from "wastewater discharge permit holders," rather than the broader "permit holders."

The companion bill, SB 597 by Armbrister, has been referred to the Senate Natural Resources Committee.

A related bill, SB 549 by Barrientos, which would reauthorize funding for the Clean Rivers Act without making other changes to the Water Code, also has been referred to the Senate Natural Resources Committee.