

SUBJECT: Solid waste permit fee shift to local and regional governments

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Chisum, Howard, Kuempel, Stiles, Talton, Yost
0 nays
3 absent — Jackson, Dukes, Howard

WITNESSES: For — Sandra Pickett, City Council of Liberty; John Thompson, County Judges and Commissioners Association and Texas Association of Regional Councils of Government; Thomas J. Blazek, City of Panhandle; Al J. Notzon III, Alamo Council of Governments; Don Kelley, South East Texas Regional Planning Commission; Gary Pitner, Panhandle Regional Planning Commission; Paul Edwards, Middle Rio Grande Development Council; Justin R. Ormsby, Rio Grande Council of Governments; Jack C. Carmichael, Texas Chapter of Solid Waste Association of North America; Mark Mendez, Tarrant County Commissioners Court

Against — Chuck Button, Municipal Solid Waste Association/National Solid Waste Association

On — Stephen Minick and Patti Everitt, Texas Natural Resource Conservation Commission

BACKGROUND: Under current law, at least half of solid waste fee revenue is dedicated to TNRCC solid waste permitting and enforcement programs and related support activities. The balance is dedicated to pay for activities that will enhance the state's solid waste management programs (Health and Safety Code, sec. 361.014).

Solid waste fee revenue (commonly called "tipping fees") is collected at municipal and private landfills. The revenue from tipping fees has amounted, in recent years, to approximately \$24-25 million annually. The balance of the revenues not used by the commission is eligible for a number of solid waste management activities, including the provision of technical assistance and supplemental funding to local governments for solid waste management and litter abatement, the establishment of an office of waste minimization and recycling, and the remediation of landfills releasing hazardous substances or threatening groundwater.

Financial assistance to local governments from tipping fees is usually through direct grants to regional councils of governments, municipalities and other political subdivisions of the state.

Regional councils of government are voluntary associations of local governments recognized as political subdivisions of the state. There are 24 of them in Texas and they are known by several names, including councils of government (COGS), regional planning commissions, association of government and area and development councils. Each of the 24 regions have a geographical "planning region" designated by the governor. Regional councils of government primarily engage in regional planning and promotion of intergovernmental cooperation.

Regional councils of government are usually governed by local officials. State law requires that two thirds of the governing body be local elected officials of general purpose governments, such as cities and counties. COGS get funding from federal, state and local sources, including membership dues and grants from the state.

The enabling legislation for regional councils is Local Government Code, Chapter 391. In 1983, the Legislature authorized COGS to develop regional solid waste management plans and local governments to develop local solid waste management plans.

SB 1340 by Parker, enacted by the Legislature in 1991, created a comprehensive recycling program and set a goal of recycling 40 percent of the state's municipal solid waste by 1994.

DIGEST:

CSHB 3072 would require that half of the revenue that TNRCC collects from solid waste fee revenue (tipping fees) be dedicated to local and regional solid waste projects consistent with regional plans approved by the commission. The funds would be used to update and maintain those plans.

The revenues would be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions. The TNRCC would allocate the funds according to a formula that would take into account population, area, solid waste fee generation and public health needs.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

SUPPORTERS
SAY:

The solid waste tipping fee was originally enacted to expedite the TNRCC permitting and enforcement processes and ensure that financial assistance was available to help local governments manage solid waste. Approximately 50 percent of the fees are collected from private solid waste facilities and 50 percent from municipalities.

Municipalities pay tipping fees relying on the fact that some of the money is coming back to them in the form of grant funding. In recent years, however, the amount of tipping fees that the TNRCC has allocated to local entities has dropped. Tipping fee revenues granted for regional and local activities have gone from 46 percent of total revenues in 1993 and to 27 percent of total revenues in 1995. CSHB 3072 would guarantee that 50 percent of the tipping fee revenue would be returned to local governments.

Although the portion of the tipping fee revenue dedicated to local governments and regional planning commissions is not defined under current law, most of the regional planning entities thought that TNRCC had promised to grant 50 percent of the tipping fee back to local governments. Instead, TNRCC has increased its use of the total fund, leaving regional and local planning entities out on a limb.

Local and regional planning entities such as regional councils of government carry out regional and local solid waste projects specific to their area's needs, and they depend on tipping fee money to carry out their projects. The grants are not only available for COGS, but cities and counties can apply directly for the grants as well. Local governments and planning entities are far better able than the state to prioritize which projects are worthwhile and necessary and spend the money carefully where it is most needed.

CSHB 3072 would provide for a more decentralized approach to solid waste planning. Because solid waste is generated at the local level, local planning entities are uniquely suited to have the most direct effect on waste reduction. It is essential that waste reduction begins in earnest to help ensure the state reaches its goal of recycling 40 percent of the state's municipal solid waste. The COGS and local governments, who are all different geographically and demographically, are the entities best able to come up with effective programs.

It is only fair to require that funds be allocated by a formula that would take into account population, area and solid waste fee generation. The North Central Texas Region, for example, generates 29 percent of the solid waste landfilled in the state, and 29 percent of the tipping fees. Because the TNRCC has retained a larger and larger portion of the fee revenue and there is no fair share allocation formula under current law, the North Central Texas Region has been allocated only 12 percent of all available grant funding in the past three years. CSHB 3072 would ensure fair treatment of all regions that would receive available grant funding.

The COGS or other entities who receive grants from the state cannot misuse funds; their projects must be consistent with TNRCC approved regional solid waste management plans. COGS are political subdivisions of the state and accountable to the state. They are required to have an annual independent audit, which is submitted to funding agencies and the governor's office. They are also accountable to their board, made up of representatives of their constituent communities.

COGS pass on about 85 percent of the state money they are granted to their local communities, and in general their administrative costs run at about 6 percent.

Most cities are strapped for cash and fearful of a state mandate to reduce the amount of solid waste going to landfills by 40 percent. To accomplish this, cities will have to invest in expensive recycling and composting equipment as well as transfer and processing facilities. The decreasing levels of grant assistance available from TNRCC is threatening to cripple needed programs and investments.

**OPPONENTS
SAY:**

CSHB 3072 could reduce TNRCC's ability to comply with statutory mandates because the bill would reduce the amount of funds available for TNRCC solid waste programs. The TNRCC estimates that the bill would result in a 33 percent decrease (a \$5.15 million loss) in the TNRCC's operating expenses related to municipal solid waste programs.

Loss of tipping fee revenue could hinder TNRCC's ability to monitor, inspect and take enforcement actions regarding landfills, respond to emergency clean-ups of solid waste sites, reduce the agency's ability to address citizen complaints, and prolong permit applications. Assistance to local governments struggling to comply with federal solid waste requirements would be reduced.

TNRCC's recycling technical assistance program would be significantly affected by the loss of funds, which in turn could negatively impact the growing Texas recycling industry. Recycling is a statewide program and it would be impractical for the recycling industry to have to develop a relationship with each of the 24 COGS rather than one office at TNRCC. TNRCC's ability to provide technical assistance to local governments, cities and businesses to help them reduce waste streams could also be jeopardized by the loss of funding.

TNRCC might also have to discontinue its current support for voluntary and rural collection programs for hazardous waste, as well as agricultural waste and recycling collections, known as Texas County Cleanups in rural areas. It would be difficult for COGS to sponsor these programs due to the expense and liability involved.

Requiring that funds be allocated by a formula that would take into account population, area and solid waste fee generation would leave rural areas with too little money to provide for their solid waste programs. The funding formula that would be established by the TNRCC in CSHB 3072 would favor urban areas over small and rural communities. Smaller communities, which often have a limited tax base, may have more of a need for funding than urban areas.

Regional councils of government should not be guaranteed 50 percent of tipping fee revenues when there is too little oversight over how they use their funds. In addition, reduced funding would limit TNRCC's ability to monitor the COGS implementation of regional plans for the management of solid waste.

In the past, COGS have spent too much of their grant money for administrative costs and duplicative studies. Too much money is spent on staffing, offices, planning coordination, plan completion, studies, etc. and too little is passed through as grants to local communities for specific projects. This is not the best use of the state's tipping fee revenues.

CSHB 3072 would limit TNRCC's ability to deal with emergency situations like a potentially explosive build-up of methane in a landfill near a residential neighborhood, or groundwater contamination because all the funding would be dedicated at the beginning of the fiscal year.

The TNRCC has acted in good faith in granting as much money as possible to the COGS to support their local activities. The first year of the grant program the agency had excess funding that had accrued when the municipal solid waste programs and new recycling programs had not yet been put into place. As a result, the amount given to the COGS during the first year of the grant program in 1992 was artificially high. Some of the COGS got the mistaken impression that the state had promised always to return half the funds in the form of grants to local governments. They are disappointed that in subsequent years the percent of grants has diminished, but the TNRCC, which must administer more and more statutorily mandated programs and is under tight budgetary constraints, simply cannot afford to allocate 50 percent of annual revenues to other units of government and meet all of the current federal and state statutory and regulatory obligations.

OTHER
OPPONENTS
SAY:

The bill should require that projects funded by tipping fees be prohibited from being used by COGS for projects or purchases such as a landfill transfer station that would end up competing with private entities who paid the tipping fees in the first place. Otherwise, the private haulers and landfill operators, who pay approximately 50 percent of the tipping fees, could be put in a situation where they would be subsidizing their own competition.

To ensure that the tipping fee revenue given to the COGS is actually spent at the local level, and not spent internally by the COGS, the bill should cap the amount of money that could be spent on administrative expenses.

The effective date of the bill should be changed to September 1, 1996 to give the TNRCC additional time to re-allocate resources and find alternative ways to support solid waste programs.

NOTES:

The committee substitute did not make substantive changes to the filed version of the bill.

The companion bill, SB 1167 by Shapiro, would add provisions requiring that projects funded by tipping fees could not create a competitive advantage over private industries providing recycling or solid waste services and would have to demonstrate that they would promote cooperation between public and private entities. SB 1167 was placed on the Senate Regular Order of Business Calendar on April 19.