

SUBJECT: Restricting siting of solid waste facilities in certain communities

COMMITTEE: Environmental Regulation — favorable, with amendments

VOTE: 6 ayes — Chisum, Jackson, Allen, Hirschi, Kuempel, Puente
2 nays — Howard, Talton
1 absent—Dukes

WITNESSES: For — Dominga Adamses, Committee for Environmental Justice; Leslie Fields, Sierra Club; Reggie James, Consumers Union; Kim Phillips, Texas PTA
Against — None
On — LaNelle Anderson, Galveston Houston Association for Smog Prevention; Jon Fisher, Texas Chemical Council; Mary Miksa, Texas Association of Business and Chambers of Commerce; Judy Starnes

DIGEST: HB 2103 as amended, would establish as state policy to ensure that new solid waste facilities would not be located disproportionately in pre-existing low-income, minority, or other communities, would allow cumulative risks to be considered as evidence in solid waste siting decisions, and would require a public meeting to be held by solid waste applicants in the community where a facility was to be located.

The bill would also require that the state strategic solid waste plan ensure that new solid waste facilities were not located disproportionately in low-income, minority or other communities to minimize adverse effects of solid waste facilities on those communities. The state plan would also be required to consider the effect multiple sources of pollution and other nuisances could have on the community surrounding a solid waste facility. The plan would also be required to assess historical trends regarding the siting of solid waste facilities in low-income, minority and other communities. The office of pollution prevention would be directed to coordinate the environmental justice activities of TNRCC.

TNRCC's biennial report to the Legislature would include an evaluation of the the state's new policy of ensuring that new solid waste facilities not be located disproportionately in low-income, minority or other communities.

In an administrative proceeding concerning the siting, expansion or operation of a facility in an area where other facilities were located, the TNRCC would be required to consider evidence an affected party could offer relating to cumulative risks. Evidence of this kind could include information concerning the effect of releases, emissions or discharges from the facility in the area, the potential for exposure from multiple pathways, and the combined level of noise, odor and other impacts from all the facilities in the area.

TNRCC would be directed to develop policies and adopt rules to protect the public from cumulative risks, particularly in low-income minority communities and communities where permitted facilities were concentrated. The bill would direct TNRCC to give priority to monitoring and enforcement in areas where permitted facilities were concentrated.

The bill would also require applicants for a solid waste facility to hold a public meeting in the county where the proposed facility would be located within 45 days of filing the application. The meeting would have to include a discussion of various issues, including other sites considered for the proposed facility, potential benefits to the local community of constructing the facility, and employment opportunities at the facility. The applicant would be required to mail TNRCC a report of the proceedings of the meeting.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

HB 2103 would encourage justice and equity in solid waste facility siting. The bill would ensure that lower income and minority communities especially, but also any community where there was a disproportionate amount of polluting facilities, would be protected. Often, a disproportionate number of polluting facilities are located in one neighborhood or community, leading to cumulative negative health effects that currently are not taken into consideration when siting decision are made.

Multiple studies have shown that low-income and minority communities are disproportionately the site of concentrated industrial activity and bear the costs in decreased value and use of property as well as the burdens of health hazards and environmental degradation associated with living near polluting facilities. The current disproportionate burden in environmental health hazards ultimately translates to unnecessary costs for the state and taxpayers. Persistent and untreated illness resulting from contamination requires money from the state in public health expenditures. Attempting after-the-fact solutions through the legal system takes up state resources and is largely ineffective. HB 2103 would represent an active approach to the problem because environmental inequities would be prevented from the start.

Directing TNRCC to consider cumulative effects of pollution on a neighborhood when making permitting decisions would give residents a chance to avoid having other polluting facilities located in their neighborhoods. Residents of neighborhoods where many facilities are located are at a much higher risk of health problems because the chemicals can add up to toxic combinations. Under the bill, TNRCC would be directed to develop and implement policies to protect the public from cumulative or multiple risks, particularly in areas hosting a large number of facilities. Public health and the environment are affected by the total amount of pollutants in a particular area, but administrative proceedings to consider a permit do not consider the total amount of pollution in an area. The bill would require TNRCC to make decisions based on actual exposure rather than only the exposure from the one facility under consideration.

The bill is not likely to cost \$1 million a year to implement as the fiscal note claims. It would not require TNRCC to assess cumulative impacts independent of the issue being raised in an administrative proceeding or require TNRCC to perform toxicological studies or chemical analyses. It would merely require TNRCC to consider evidence of existing sources of pollution when a new source of pollution was proposed in a community. TNRCC's current interpretation of law prohibits consideration of cumulative or multiple sources of pollution.

**OPPONENTS
SAY:**

It is bad public policy to carve out environmental law for one class of citizens, as this bill would do. Siting problems in urban areas should be handled by zoning rather than environmental regulation.

There is no real proof that “environmental racism” actually exists. In most cases, low-income and minority communities grow up around facilities rather than the other way around, and afterwards the facility is criticized for being sited in a low-income community. Solid waste facilities are a necessary part of our communities and must be sited somewhere. The farther they are pushed from urban areas, the farther the waste must be transported to reach them, endangering motorists and creates other problems.

Requiring TNRCC to consider the cumulative risks of pollutants would require an evaluation of a broad range of potential chemical interactions would necessitate hiring additional staff. According to the bill's fiscal note, this could cost TNRCC approximately \$1 million annually. This is an unnecessary expenditure at a time when the agency cannot afford to fund current programs.

NOTES:

The committee amendments substantially revised the bill, removing references to specific siting restrictions and adding provisions to require public meetings in the community where a solid waste facility was proposed.