

103^D CONGRESS
1ST SESSION

H. CON. RES. 63

Concerning the establishment of a North American Commission on the
Environment.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. WYDEN (for himself and Mr. RICHARDSON) submitted the following
concurrent resolution; which was referred to the Committee on Foreign Affairs

CONCURRENT RESOLUTION

Concerning the establishment of a North American
Commission on the Environment.

Whereas the completion of the North American Free Trade
Agreement (NAFTA) will strengthen economic links
among the United States, Mexico and Canada;

Whereas such agreement will increase commerce, trade, and
economic development in and among the three nations;

Whereas expanded trade and economic development under
NAFTA is likely to increase transboundary environ-
mental damage;

Whereas environmental needs must be addressed to protect
public health, retain a decent quality of life, and fulfill
the promise of NAFTA to promote sustainable develop-
ment and ensure that environmental standards will be a

full part of, and not be sacrificed for, the economic development of all NAFTA parties;

Whereas greater involvement by the Governments of the United States and Mexico is necessary to address the environmental and public health problems in the United States-Mexico border area;

Whereas there has been concern expressed in the United States and Mexico that there are insufficient governmental financial resources committed to meet the needs for environmental infrastructure in the United States-Mexico border region;

Whereas a valuable supplement to government funding for environmental cleanup and protection projects in the United States-Mexico border region would be access to funds in the international capital markets;

Whereas access to international capital markets will be facilitated by the creation of independent, public and private, financial entities with the power to incur and issue debt, backed by government guaranties, supported by the right to collect user fees on facilities constructed, and authorized to receive payments from governments;

Whereas there is an expressed need by the Government of Mexico for increased technical assistance for training in environmental enforcement, regulatory development, environmental impact assessment, and natural resources management;

Whereas there is a need to promote greater pollution prevention, voluntary service and corporate philanthropy in the United States-Mexico border region;

Whereas to further protect the environment in the NAFTA region, there is a need for a North American Commission

on the Environment to complement the work of the NAFTA Free Trade Commission on environmental aspects of the NAFTA;

Whereas a lack of appropriate environmental laws, standards or enforcement could lead to additional environmental damage or create an incentive for companies to relocate operations in areas with relatively weaker environmental laws, standards or enforcement;

Whereas there is a need to promote greater public participation in environmental protection and stronger community right-to-know initiatives for the residents in the NAFTA region; and

Whereas further study may reveal the need for a stronger bilateral program between the United States and Canada to address environmental protection issues related to NAFTA: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

3 **SECTION 1. CREATION OF THE NORTH AMERICAN COMMIS-**
4 **SION ON THE ENVIRONMENT.**

5 (a) Not later than the date of the enactment of legis-
6 lation implementing the North American Free Trade
7 Agreement (NAFTA), the President should reach agree-
8 ment with the Governments of Mexico and Canada on the
9 establishment of a North American Commission on the
10 Environment (hereinafter referred to as the “Commis-
11 sion” or “NACE”) to—

1 (1) create and administer a Border Environ-
2 mental Fund to address the cleanup of environ-
3 mental damage and the construction of facilities to
4 help prevent environmental and related public health
5 problems in the United States-Mexico border region,

6 (2) strengthen local environmental protection
7 institutions along the United States-Mexico border
8 and create a United States-Mexico Border Volunteer
9 Corps,

10 (3) participate as an equal partner with the
11 NAFTA Free Trade Commission on resolution of
12 environmental disputes and other environmental is-
13 sues related to NAFTA,

14 (4) establish a process to improve enforcement
15 of environmental laws not covered by NAFTA that
16 may affect trade or investment patterns, the global
17 commons or transboundary environmental condi-
18 tions,

19 (5) establish a process and timetable to raise
20 and harmonize environmental standards relating to
21 products, as well as production and process methods,
22 and establish criteria for the use of trade measures
23 related to production and process methods,

1 (6) promote improved pollution prevention, in-
2 creased public participation in environmental protec-
3 tion, and community right-to-know principles,

4 (7) develop, with strong public participation, a
5 voluntary code of environmental practices for compa-
6 nies operating within the NAFTA region, and

7 (8) serve as a forum for consideration of long-
8 term regional environmental issues and development
9 of proposals to continually improve the environment
10 and public health in the NAFTA region.

11 (b) The Commission under subsection (a) should be
12 established as follows:

13 (1) The membership of the Commission shall be
14 determined through negotiation among the NAFTA
15 parties, except that the representatives shall be min-
16 isters responsible for the environment or their des-
17 ignees. The Commission shall establish its rules and
18 procedures.

19 (2) The Commission shall establish operating
20 committees with responsibility for the tasks de-
21 scribed in subsection (a).

22 **SEC. 2. BILATERAL UNITED STATES-MEXICO ACTIVITIES.**

23 (a) The Commission should create and administer a
24 Border Environmental Fund (hereinafter referred to as
25 the "Fund") to address cleanup of existing environmental

1 problems and construction of facilities to help prevent fu-
2 ture environmental and related public health problems in
3 the United States-Mexico border region.

4 (b) The Fund should be chartered by Congress to
5 carry out the following:

6 (1) Identify priorities and distribute funds for
7 projects to clean up environmental damage in the
8 United States-Mexico border region that are agreed
9 to by the Governments of the United States and
10 Mexico:

11 (A) The Governments of the United States
12 and Mexico shall reach agreement on a finan-
13 cial commitment lasting not less than five years
14 for clean-up projects and shall authorize the
15 Fund to sell bonds in the amount of the agreed
16 financial commitment. Because cleanup projects
17 will not create revenue-generating facilities, the
18 bonds used to finance cleanup shall be jointly
19 guaranteed by the governments, and the gov-
20 ernments shall appropriate annually to the
21 Fund the funds needed to service and redeem
22 the bonds.

23 (B) Each year, the Fund shall hold hear-
24 ings in Washington, DC, Mexico City and sites
25 along the United States-Mexico border area and

1 shall receive public comments on the priorities
2 of clean-up projects. The Fund shall issue a
3 draft report identifying priorities and shall pro-
4 vide a reasonable period of time for further
5 comments before issuing its final priorities for
6 the year. Spending on such projects shall then
7 be in accordance with such priorities.

8 (2) Provide financial guarantees on the debt of
9 public and private financial entities in the United
10 States-Mexico border region with respect to projects
11 to create, replace, or improve environmental infra-
12 structure. The charter related to this subsection
13 should include the following provisions:

14 (A) The obligations underwritten by the
15 Fund shall not have any guaranty, express or
16 implied, of the United States Government or
17 any of its agencies.

18 (B) The Fund shall give preference to
19 projects that generate user fees to help retire
20 debt issued to construct facilities.

21 (C) The capital of the Fund contributed by
22 the Governments of the United States and Mex-
23 ico shall be in equal amounts and shall be not
24 less than \$200,000,000 and not more than
25 \$500,000,000.

1 (D) The guaranty of the Fund should con-
2 fer on underlying debt instruments issued by
3 public and private financial entities the lowest
4 investment grade ratings from independent and
5 internationally recognized securities ratings or-
6 ganizations for the purpose of leveraging the
7 Fund to the maximum extent possible so that
8 the greatest possible ratio exists between the
9 amount of debt guaranteed by the Fund and
10 the amount of capital in the Fund.

11 (E) The Fund shall have a board of direc-
12 tors comprised of an equal number of members
13 representing the United States and Mexico. The
14 members from the United States shall be ap-
15 pointed by the President.

16 (F) The board of directors shall be charged
17 with the duty of financial management of the
18 Fund and shall report to the Commission.

19 (G) The board of directors should be pro-
20 vided with an independent staff in order to dis-
21 charge its responsibilities.

22 (H) Each year, the Fund shall hold hear-
23 ings in Washington, DC, Mexico City and sites
24 along the United States-Mexico border area and
25 shall receive public comments on the priorities

1 of environmental infrastructure projects. The
2 Fund shall issue a draft report identifying pri-
3 orities and shall provide a reasonable period of
4 time for further comments before issuing its
5 final priorities for the year. The final report
6 shall guide the Fund in providing guarantees
7 for that year.

8 (c) The Commission should work with State and local
9 officials, community groups, nongovernmental organiza-
10 tions, and local business groups to strengthen local initia-
11 tives along the United States-Mexico border area to pro-
12 tect and improve the environment, and to enhance cross-
13 border cooperation for environmental protection. To help
14 strengthen local initiatives, the Commission shall ensure
15 that the United States and Mexico assign Federal environ-
16 mental employees to deal solely with border environmental
17 issues, and work closely and frequently with local rep-
18 resentatives. The Commission shall also establish a United
19 States-Mexico Border Volunteer Service, in cooperation
20 with the Commission on National and Community Service,
21 to expand volunteer assistance activity in the fields of pub-
22 lic health, civil engineering, environmental sciences, urban
23 planning and architecture, and to promote initiatives
24 aimed at increasing the level of corporate philanthropy in
25 the United States-Mexico border region.

1 **SEC. 3. TRILATERAL ACTIVITIES.**

2 (a) The Commission should participate as an equal
3 partner with the Free Trade Commission established by
4 Chapter 20 of the North American Free Trade Agreement
5 on environmental issues related to the following:

6 (1) The implementation or further elaboration
7 of the Agreement.

8 (2) The resolution of disputes that may arise
9 regarding its interpretation or application. The
10 North American Commission on the Environment
11 (NACE) shall help identify what are environmental
12 disputes, and participate actively at each step in the
13 dispute resolution process. The NACE should main-
14 tain a roster of capable and impartial environmental
15 experts, comparable to the roster of trade experts
16 created by the Free Trade Commission. Panels to
17 resolve NAFTA environmental disputes should con-
18 tain an equal number of panelists from the rosters
19 of the Free Trade Commission and the NACE.

20 (3) The supervision of work of all committees
21 and working groups established under the Agree-
22 ment, referred to in Annex 2001.2.

23 (4) Any other matter that may affect the oper-
24 ation of the Agreement.

25 (b) The Commission should establish a process to im-
26 prove enforcement of environmental laws, standards, and

1 regulations that affect trade or investment patterns, the
2 global commons or transboundary environmental condi-
3 tions, and which are not subject to NAFTA dispute settle-
4 ment procedures. This process should include the follow-
5 ing:

6 (1) Public hearings, consultation with the par-
7 ties, and annual reports on each party's enforcement
8 of relevant laws, standards, and regulations.

9 (2) Consultation between parties on enforce-
10 ment shortcomings identified by the Commission's
11 reports.

12 (3) If consultations do not resolve outstanding
13 issues in a timely fashion, the right for parties to re-
14 quest that the Commission consider sanctions.

15 (4) If the Commission agrees that issues not re-
16 solved by consultation warrant financial penalties, it
17 may authorize the requesting party to levy a charge
18 of not more than 1 percent ad valorem on all im-
19 ports from the other party with whom there had
20 been consultations. The funds collected shall be de-
21 posited in an environmental protection fund adminis-
22 tered by the Commission and used to finance addi-
23 tional enforcement and remediation of problems
24 caused by lack of enforcement. The Commission

1 should seek to link the size of the levy to the finan-
2 cial needs created by the lack of enforcement.

3 (c)(1) The Commission should establish a process
4 and timetable to raise and harmonize environmental
5 standards relating to products and investments, as well
6 as production and process methods, and to establish cri-
7 teria for the use of trade measures related to production
8 and process methods.

9 (2) With respect to product and investment stand-
10 ards, the Commission shall work with the relevant
11 NAFTA Committees to establish a timetable to harmonize
12 standards to the highest level that exists among the par-
13 ties, and a process to review and raise such standards over
14 time.

15 (3) With respect to standards and trade measures for
16 production and process methods, the Commission shall es-
17 tablish a process and timetable which—

18 (A) is consistent with guidelines being devel-
19 oped by the OECD and the General Agreement on
20 Tariffs and Trade (GATT), where appropriate;

21 (B) seeks to enhance environmental protection
22 while taking into account the objective of minimizing
23 negative trade effects; and

1 (C) includes a commitment to repeatedly review
2 standards with the intent to create additional envi-
3 ronmental protection.

4 (d)(1) The Commission should promote technical co-
5 operation among the NAFTA parties, improved pollution
6 prevention, increased public participation in environmental
7 protection and community right-to-know principles, where
8 such principles are not in place.

9 (2) With respect to increased public participation in
10 environmental protection, the Commission's work shall in-
11 clude—

12 (A) serving as the inquiry point for NAFTA en-
13 vironmental issues; and

14 (B) developing, in conjunction with the Free
15 Trade Commission—

16 (i) opportunities for timely public comment
17 on NAFTA disputes that involve environmental
18 issues;

19 (ii) publication, as appropriate, of tran-
20 scripts of dispute panel hearings and delibera-
21 tions; and

22 (iii) a guarantee that final reports of dis-
23 pute panels shall be made public within 15 days
24 after it is transmitted to the Commission.

1 (e) The Commission should develop, with strong pub-
2 lic participation and close consultation with nongovern-
3 mental organizations, community groups, local official and
4 business groups, a voluntary code of best environmental
5 practices for multinational corporations operating within
6 the NAFTA region, and a mechanism to certify and pub-
7 licize compliance by companies.

8 (f) The Commission should, with strong public par-
9 ticipation, consider long-term regional environmental is-
10 sues and develop proposals to continually improve the en-
11 vironment and public health in the NAFTA region, includ-
12 ing—

13 (1) developing a process to facilitate participa-
14 tion by NAFTA parties in future environmental and
15 conservation agreements that may rely on measures
16 which, on their face, would conflict with the parties'
17 obligations under NAFTA;

18 (2) developing environmental guidelines for ac-
19 cession to NAFTA by other countries;

20 (3) reviewing United States-Canada environ-
21 mental issues to determine whether existing agree-
22 ments are adequate to address issues of
23 transboundary environmental damage, threats to the
24 global commons or efforts to attract investment by

1 relaxing domestic health, safety or environmental
2 measures;

3 (4) initiating negotiations among NAFTA par-
4 ties on possible future changes to NAFTA to ad-
5 dress environmental concerns not envisioned by the
6 current Agreement; and

7 (5) developing a program to support the work
8 and goals of the United Nations Commission on
9 Sustainable Development.

10 **SEC. 4. SECRETARIAT.**

11 (a)(1) The Commission shall establish and oversee a
12 Secretariat comprising national sections.

13 (2) Each party shall—

14 (A) establish a permanent office of its section;

15 (B) provide full-time staff in equal numbers to
16 enable the Commission to carry out its mandate;

17 (C) be responsible for the operation and costs
18 of its section, and the remuneration and payment of
19 expenses of panelists and members of committees
20 and scientific review boards established;

21 (D) designate an individual to serve as Sec-
22 retary for its section, who shall be responsible for its
23 administration, management, and coordination with
24 the NAFTA Free Trade Commission; and

1 (E) notify the Commission of the location of its
2 section's office.

3 (3) The Secretariat shall—

4 (A) provide assistance to the Commission;

5 (B) provide administrative assistance to dispute
6 resolution panels; and

7 (C) as the Commission may direct, support the
8 work of other committees and groups established
9 under the NAFTA and otherwise facilitate the oper-
10 ation of the NAFTA.

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