

104TH CONGRESS
1ST SESSION

S. 196

To establish certain environmental protection procedures within the area comprising the border region between the United States and Mexico, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 11 (legislative day, JANUARY 10), 1995

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To establish certain environmental protection procedures within the area comprising the border region between the United States and Mexico, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States-Mexico Border Environmental Protection
6 Act”.

7 (b) PURPOSE.—The purpose of this Act is to provide
8 for the protection of the environment within the area com-
9 prising the border region between the United States and

1 Mexico, as defined by the Agreement on Cooperation for
2 the Protection and Improvement of the Environment in
3 the Border Area, signed at La Paz on August 14, 1983,
4 and entered into force on February 16, 1984 (TIAS
5 10827) (commonly known as the “La Paz Agreement”).

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Environ-
10 mental Protection Agency.

11 (2) BORDER ENVIRONMENT ZONE.—The term
12 “Border Environment Zone” means the area de-
13 scribed in section 1(b).

14 (3) BORDER SANITATION EMERGENCY.—The
15 term “border sanitation emergency” means a situa-
16 tion in which untreated or inadequately treated sew-
17 age is discharged into international surface rivers or
18 streams that form or cross the boundary between
19 the United States and Mexico.

20 (4) COMMISSION FUND.—The term “Commis-
21 sion Fund” means the United States International
22 Boundary and Water Commission Fund established
23 by section 10(c).

24 (5) ENVIRONMENTAL FUND.—The term “Envi-
25 ronmental Fund” means the United States-Mexico

1 Border Environmental Protection Fund established
2 by section 3.

3 (6) UNITED STATES COMMISSIONER.—The term
4 “United States Commissioner” means the United
5 States Commissioner, International Boundary and
6 Water Commission, United States and Mexico.

7 **SEC. 3. ENVIRONMENTAL FUND.**

8 (a) ESTABLISHMENT.—There is established in the
9 Treasury of the United States a trust fund to be used
10 to investigate and respond to conditions that the Adminis-
11 trator determines present a substantial threat to the land,
12 air, or water resources of the Border Environment Zone.
13 The fund shall be known as the “United States-Mexico
14 Border Environmental Protection Fund” and shall consist
15 of—

16 (1) such amounts as are transferred to the En-
17 vironmental Fund under subsection (b); and

18 (2) any interest earned on investments of
19 amounts in the Environmental Fund under sub-
20 section (d).

21 (b) TRANSFER TO ENVIRONMENTAL FUND.—From
22 amounts made available to the Department of State, the
23 Secretary of State shall transfer to the Secretary of the
24 Treasury for deposit into the Environmental Fund
25 \$10,000,000. The Secretary of the Treasury shall deposit

1 amounts received under this subsection into the Environ-
2 mental Fund.

3 (c) EXPENDITURES FROM ENVIRONMENTAL
4 FUND.—

5 (1) IN GENERAL.—Subject to this subsection,
6 upon request by the Administrator, the Secretary of
7 the Treasury shall transfer from the Environmental
8 Fund to the Administrator such amounts as the Ad-
9 ministrator determines are necessary to carry out
10 field investigations and remediation of an environ-
11 mental emergency declared by the Administrator
12 under section 4.

13 (2) COST-SHARING PROGRAMS.—Amounts in
14 the Environmental Fund shall be available for use
15 by the Administrator for cost-sharing programs that
16 carry out the purpose described in paragraph (1)
17 with—

18 (A) the Government of Mexico;

19 (B) any of the States of Arizona, Califor-
20 nia, New Mexico, or Texas;

21 (C) a political subdivision of any of the
22 States referred to in subparagraph (B);

23 (D) a local emergency planning committee;

24 (E) a federally recognized Indian tribe; or

1 (F) any other entity that the Adminis-
2 trator determines to be appropriate.

3 (3) METHODS OF DISTRIBUTION OF FUNDS.—

4 In carrying out the purpose described in paragraph
5 (1), the Administrator may expend amounts made
6 available to the Administrator from the Environ-
7 mental Fund directly or make the amounts available
8 through grants or contracts.

9 (4) ADMINISTRATIVE EXPENSES.—An amount
10 not exceeding 10 percent of the amounts in the En-
11 vironmental Fund shall be available in each fiscal
12 year to pay administrative expenses necessary to
13 carry out the purpose described in paragraph (1).

14 (5) AVAILABILITY OF FUNDS.—Amounts in the
15 Environmental Fund shall be available without fiscal
16 year limitation.

17 (d) INVESTMENT OF FUNDS.—

18 (1) IN GENERAL.—The Secretary of the Treas-
19 ury shall invest such portion of the Environmental
20 Fund as is not, in the judgment of the Secretary, re-
21 quired to meet current withdrawals. Investments
22 may be made only in interest-bearing obligations of
23 the United States.

1 (2) ACQUISITION OF OBLIGATIONS.—For the
2 purpose of investments, obligations may be ac-
3 quired—

4 (A) on original issue at the issue price; or

5 (B) by purchase of outstanding obligations
6 at the market price.

7 (3) SALE OF OBLIGATIONS.—Any obligation ac-
8 quired by the Environmental Fund may be sold by
9 the Secretary of the Treasury at the market price.

10 (4) CREDITS TO ENVIRONMENTAL FUND.—The
11 interest on, and the proceeds from the sale or re-
12 demption of, any obligations held in the Environ-
13 mental Fund shall be credited to and form a part of
14 the Environmental Fund.

15 (e) TRANSFERS OF AMOUNTS.—

16 (1) IN GENERAL.—The amounts required to be
17 transferred to the Environmental Fund under sub-
18 section (d) shall be transferred at least monthly
19 from the general fund of the Treasury to the Envi-
20 ronmental Fund on the basis of estimates made by
21 the Secretary of the Treasury.

22 (2) ADJUSTMENTS.—Proper adjustment shall
23 be made in amounts subsequently transferred to the
24 extent prior estimates were in excess of or less than
25 the amounts required to be transferred.

1 **SEC. 4. DECLARATION OF ENVIRONMENTAL EMERGENCIES.**

2 (a) IN GENERAL.—

3 (1) DETERMINATION BY THE ADMINIS-
4 TRATOR.—Subject to paragraph (3), if the Adminis-
5 trator determines that conditions exist that present
6 a substantial threat to the land, air, or water re-
7 sources of the area comprising the Border Environ-
8 ment Zone, the Administrator may declare that an
9 environmental emergency exists in the Zone.

10 (2) PETITION OF GOVERNOR.—Subject to para-
11 graph (3), in addition to the authority under para-
12 graph (1), the Administrator, upon the petition of
13 the Governor of the State of Arizona, California,
14 New Mexico, or Texas, or the governing body of a
15 federally recognized Indian tribe, may declare that
16 an environmental emergency exists in the Zone.

17 (3) LIMITATION.—The Administrator may not
18 declare a condition to be an environmental emer-
19 gency under this section if the condition is specifi-
20 cally within the sole jurisdiction of the International
21 Boundary and Water Commission.

22 (b) CONSULTATION WITH AFFECTED PARTIES.—In
23 responding to emergencies, the Administrator shall consult
24 and cooperate with affected States, counties, municipali-
25 ties, Indian tribes, the Government of Mexico, and other
26 affected parties.

1 (c) AUTHORITY TO RESPOND.—The Administrator
2 may respond directly to an emergency declared under this
3 section or may coordinate the response with appropriate
4 State or local authorities.

5 **SEC. 5. INFORMATION SHARING.**

6 (a) IN GENERAL.—The Administrator, in cooperation
7 with the Secretary of State, the Governors of the States
8 of Arizona, California, New Mexico, and Texas, the gov-
9 erning bodies of federally recognized Indian tribes located
10 within the Border Environment Zone, and the appropriate
11 officials of the Government of Mexico, may establish a sys-
12 tem for information sharing and for early warning to the
13 United States, each of the several States and political sub-
14 divisions of the States, and Indian tribes, of environmental
15 problems affecting the Border Environment Zone.

16 (b) INTEGRATION INTO EXISTING SYSTEMS AND
17 PROCEDURES.—The Administrator shall integrate sys-
18 tems and procedures established under this section into
19 any systems and procedures that are in existence at the
20 time of the establishment under this section and that were
21 established to provide information sharing and early warn-
22 ing regarding environmental problems affecting the Bor-
23 der Environment Zone.

1 **SEC. 6. REPORTS TO CONGRESS.**

2 (a) IN GENERAL.—After consultation with the Sec-
3 retary of State, appropriate officials of the Government
4 of Mexico, the Governors of the States of Arizona, Califor-
5 nia, New Mexico, and Texas, and the governing bodies of
6 appropriate federally recognized Indian tribes, the Admin-
7 istrator shall submit an annual report to Congress describ-
8 ing the use of the Environmental Fund during the cal-
9 endar year preceding the calendar year in which the report
10 is filed, and the status of the environmental quality of the
11 area comprising the Border Environment Zone.

12 (b) NOTICE OF AVAILABILITY.—The Administrator
13 shall publish a notice of the availability of the report in
14 the Federal Register, together with a brief summary of
15 the report.

16 **SEC. 7. INTERNATIONAL AGREEMENTS.**

17 (a) AUTHORITY.—The Secretary of State, acting
18 through the United States Commissioner, may enter into
19 agreements with the appropriate representative of the
20 Ministry of Foreign Relations of Mexico for the purpose
21 of correcting border sanitation emergencies.

22 (b) RECOMMENDATIONS.—Agreements entered into
23 under subsection (a) should consist of recommendations
24 to the Governments of the United States and Mexico of
25 measures to protect the health and welfare of persons
26 along the international surface rivers and streams that

1 form or cross the boundary between the United States and
2 Mexico, including recommendations concerning—

3 (1) facilities that should be constructed, oper-
4 ated, and maintained in each country;

5 (2) estimates of the costs of plans, construction,
6 operation, and maintenance of the facilities;

7 (3) formulas for the sharing of costs between
8 the United States and the Government of Mexico;
9 and

10 (4) a time schedule for the construction of fa-
11 cilities and other measures recommended by the
12 agreements entered into under this section.

13 **SEC. 8. JOINT RESPONSES TO BORDER SANITATION EMER-**
14 **GENCIES.**

15 (a) CONSTRUCTION OF WORKS.—The Secretary of
16 State, acting through the United States Commissioner,
17 may enter into agreements with the appropriate represent-
18 ative of the Ministry of Foreign Relations of Mexico for
19 the purpose of joint response to correct border sanitation
20 emergencies through the construction of works, repair of
21 existing infrastructure, and other appropriate measures in
22 Mexico and the United States. The United States Com-
23 missioner shall consult with the Governors of the States
24 of Arizona, California, New Mexico, and Texas in develop-

1 ing and implementing agreements entered into under this
2 section.

3 (b) HEALTH AND WELFARE.—Agreements entered
4 into under subsection (a) should consist of recommenda-
5 tions to the Governments of the United States and Mexico
6 that establish general response plans to protect the health
7 and welfare of persons along the international surface riv-
8 ers and streams that form or cross the boundary between
9 the United States and Mexico, including recommendations
10 concerning—

11 (1) types of border sanitation emergencies re-
12 quiring response, including sewer line breaks, power
13 interruptions to wastewater handling facilities,
14 breakdowns in components of wastewater handling
15 facilities, and accidental discharge of sewage;

16 (2) types of response to border sanitation emer-
17 gencies, including acquisition, use, and maintenance
18 of joint response equipment and facilities, small
19 scale construction (including modifications to exist-
20 ing infrastructure and temporary works), and the in-
21 stallation of emergency and standby power facilities;

22 (3) formulas for the distribution of the costs of
23 responses to emergencies under this section on a
24 case-by-case basis; and

1 (4) requirements for defining the beginning and
2 end of an emergency.

3 **SEC. 9. CONSTRUCTION, REPAIRS, AND OTHER MEASURES.**

4 (a) BORDER SANITATION EMERGENCIES.—The Sec-
5 retary of State, acting through the United States Commis-
6 sioner, may respond through construction, repairs, and
7 other measures in the United States to correct border
8 sanitation emergencies. The Secretary of State may re-
9 spond directly to a border sanitation emergency or may
10 coordinate the response with appropriate State or local au-
11 thorities.

12 (b) CONSULTATION WITH AFFECTED PARTIES.—In
13 responding to a border sanitation emergency, the Sec-
14 retary shall consult and cooperate with the Administrator,
15 affected States, counties, municipalities, federally recog-
16 nized Indian tribes, the Government of Mexico, and other
17 affected parties.

18 **SEC. 10. TRANSFER OF FUNDS.**

19 (a) TRANSFER AUTHORITY.—The Secretary of State,
20 acting through the United States Commissioner, may in-
21 clude as part of the agreements entered into under sec-
22 tions 7, 8, and 9 such arrangements as are necessary to
23 administer the transfer to another country of funds as-
24 signed to 1 country and obtained from Federal or non-
25 Federal governmental or nongovernmental sources.

1 (b) COST-SHARING AGREEMENTS.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), no funds of the United States shall be ex-
4 pended in Mexico for emergency investigation or re-
5 mediation pursuant to section 7, 8, or 9 without a
6 cost-sharing agreement between the United States
7 and the Government of Mexico.

8 (2) EXCEPTION.—

9 (A) IN GENERAL.—Funds may be ex-
10 pended as described in paragraph (1) without a
11 cost-sharing agreement if the Secretary of State
12 determines and can demonstrate that the ex-
13 penditure of the funds in Mexico would be cost-
14 effective and in the interest of the United
15 States.

16 (B) REPORT.—If funds are expended as
17 described in paragraph (1) without a cost-shar-
18 ing agreement, the Secretary of State shall sub-
19 mit a report to the appropriate committees of
20 Congress that explains why the costs were not
21 shared between the United States and the Gov-
22 ernment of Mexico and why the expenditure of
23 the funds without cost-sharing was in the inter-
24 est of the United States.

25 (c) COMMISSION FUND.—

1 (1) ESTABLISHMENT.—There is established in
2 the Treasury of the United States a trust fund to
3 be known as the “United States International
4 Boundary and Water Commission Fund”. The Com-
5 mission Fund shall consist of—

6 (A) such amounts as are transferred to the
7 Commission Fund under paragraph (2); and

8 (B) any interest earned on investment of
9 amounts in the Commission Fund under para-
10 graph (4).

11 (2) TRANSFER TO COMMISSION FUND.—From
12 amounts made available to the Department of State,
13 the Secretary of State shall transfer to the Secretary
14 of the Treasury for deposit into the Commission
15 Fund \$5,000,000. The Secretary of the Treasury
16 shall deposit amounts received under this paragraph
17 into the Commission Fund.

18 (3) EXPENDITURES FROM COMMISSION
19 FUND.—

20 (A) IN GENERAL.—Subject to this para-
21 graph, upon request by the Secretary of State,
22 the Secretary of the Treasury shall transfer
23 from the Commission Fund to the Secretary of
24 State such amounts as the Secretary of State

determines are necessary to carry out this section and sections 7, 8, and 9.

(B) METHODS OF DISTRIBUTION OF FUNDS.—In carrying out the purpose described in subparagraph (A), the Secretary of State may expend amounts made available to the Secretary of State from the Commission Fund directly or make the amounts available through grants or contracts.

(C) ADMINISTRATIVE EXPENSES.—An amount not exceeding 10 percent of the amounts in the Commission Fund shall be available in each fiscal year to pay administrative expenses necessary to carry out the purpose described in subparagraph (A).

(D) AVAILABILITY OF FUNDS.—Amounts in the Commission Fund shall be available without fiscal year limitation.

(4) INVESTMENT OF FUNDS.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Commission Fund as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

1 (B) ACQUISITION OF OBLIGATIONS.—For
2 the purpose of investments, obligations may be
3 acquired—

4 (i) on original issue at the issue price;

5 or

6 (ii) by purchase of outstanding obliga-
7 tions at the market price.

8 (C) SALE OF OBLIGATIONS.—Any obliga-
9 tion acquired by the Commission Fund may be
10 sold by the Secretary of the Treasury at the
11 market price.

12 (D) CREDITS TO COMMISSION FUND.—The
13 interest on, and the proceeds from the sale or
14 redemption of, any obligations held in the Com-
15 mission Fund shall be credited to and form a
16 part of the Commission Fund.

17 (5) TRANSFERS OF AMOUNTS.—

18 (A) IN GENERAL.—The amounts required
19 to be transferred to the Commission Fund
20 under paragraph (4) shall be transferred at
21 least monthly from the general fund of the
22 Treasury to the Commission Fund on the basis
23 of estimates made by the Secretary of the
24 Treasury.

1 (B) ADJUSTMENTS.—Proper adjustment
2 shall be made in amounts subsequently trans-
3 ferred to the extent prior estimates were in ex-
4 cess of or less than the amounts required to be
5 transferred.

6 **SEC. 11. ADMINISTRATION.**

7 (a) IN GENERAL.—The Secretary of State and the
8 Administrator shall carry out this Act in a manner that
9 is consistent with the environmental provisions of the
10 North American Free Trade Agreement, so long as the
11 United States applies the North American Free Trade
12 Agreement to Mexico.

13 (b) DEFINITION.—In this section, the term “North
14 American Free Trade Agreement” means the agreement
15 between the United States and Mexico (without regard to
16 whether Canada is a party to all or part of the agreement)
17 entered into on December 17, 1992, and approved by Con-
18 gress pursuant to section 101(a) of the North American
19 Free Trade Agreement Implementation Act (19 U.S.C.
20 3311(a)). The term includes any letters exchanged be-
21 tween the Government of the United States and the Gov-
22 ernment of Mexico with respect to the agreement and any
23 side agreements entered into in connection with the agree-
24 ment.

1 **SEC. 12. EFFECT ON OTHER LAW.**

2 Nothing in this Act shall amend, repeal, or otherwise
3 modify any provision of the Comprehensive Environmental
4 Response, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9601 et seq.), the Superfund Amendments and Re-
6 authorization Act of 1986 (Public Law 99-499) and the
7 amendments made by the Act, or any other law, treaty,
8 or international agreement of the United States.

9 **SEC. 13. TERMINATION OF AUTHORITY.**

10 The authority provided by this Act shall terminate
11 on the date that is 5 years after the date of enactment
12 of this Act.

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