

By: Armbrister

S.B. No. 619

A BILL TO BE ENTITLED

AN ACT

relating to oil spill prevention and response.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 40.002, Natural Resources Code, is amended to read as follows:

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges; and

~~(3) [provide for development of a state coastal discharge contingency plan through planning and coordination with the Texas Natural Resource Conservation Commission to protect coastal waters from all types of spills and discharges; and~~

~~(4)]~~ administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

SECTION 2. Subdivisions (13), (17), and (22), Section 40.003, Natural Resources Code, are amended to read as follows:

(13) "Hazardous substance" means any substance,

1 except oil, designated as hazardous by the Environmental Protection
2 Agency pursuant to the Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et
4 seq.) and designated by the Texas [~~Natural Resource Conservation~~
5 Commission on Environmental Quality].

6 (17) "Oil" means oil of any kind or in any form,
7 including but not limited to crude oil, petroleum, fuel oil,
8 sludge, oil refuse, and oil mixed with wastes other than dredged
9 spoil, but does not include petroleum, including crude oil or any
10 fraction thereof, which is specifically listed or designated as a
11 hazardous substance under Subparagraphs (A) through (F) of Section
12 101(14) of the Comprehensive Environmental Response, Compensation,
13 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is
14 subject to the provisions of that Act, and which is so designated by
15 the Texas [~~Natural Resource Conservation~~] Commission on
16 Environmental Quality.

17 (22) "Response costs" means:

18 (A) with respect to an actual or threatened
19 discharge of oil, all costs incurred in an attempt to prevent,
20 abate, contain, and remove pollution from the discharge, including
21 costs of removing vessels or structures under this chapter, and
22 costs of any reasonable measures to prevent or limit damage to the
23 public health, safety, or welfare, public or private property, or
24 natural resources; or

25 (B) with respect to an actual or threatened
26 discharge of a hazardous substance, only costs incurred to
27 supplement the response operations of the Texas [~~Natural Resource~~

1 ~~Conservation]~~ Commission on Environmental Quality.

2 SECTION 3. Section 40.005, Natural Resources Code, is
3 amended to read as follows:

4 Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL
5 RESPONSE AND CLEANUP. The General Land Office, under the direction
6 and control of the commissioner, is the state's lead agency for
7 initiating response to all actual or threatened unauthorized
8 discharges of oil. In the event of an unauthorized discharge of a
9 hazardous substance, nothing in this chapter shall preclude the
10 Texas [~~Natural Resource Conservation]~~ Commission on Environmental
11 Quality from at the earliest time practicable assuming response and
12 cleanup duties pursuant to Subchapter G, Chapter 26, Water Code[~~7~~
13 ~~and the state coastal discharge contingency plan]~~.

14 SECTION 4. Section 40.052, Natural Resources Code, is
15 amended to read as follows:

16 Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the
17 unauthorized discharge involves predominantly a hazardous
18 substance, the Texas [~~Natural Resource Conservation]~~ Commission on
19 Environmental Quality shall carry out responsibility for
20 abatement, containment, removal, and cleanup of the hazardous
21 substances discharged, pursuant to Subchapter G, Chapter 26, Water
22 Code[~~7~~ ~~and to the state coastal discharge contingency plan]~~.

23 SECTION 5. Subsection (c), Section 40.101, Natural
24 Resources Code, is amended to read as follows:

25 (c) In order to prevent duplication of effort among state
26 agencies, the commissioner shall utilize the expertise of the Texas
27 [~~Natural Resource Conservation]~~ Commission on Environmental

1 Quality on technical and scientific actions, including but not
2 limited to:

- 3 (1) taking samples in the spill area;
4 (2) monitoring meteorological conditions that may
5 affect spill response operations; and
6 (3) regulating disposal of spilled material.

7 SECTION 6. Subsection (b), Section 40.103, Natural
8 Resources Code, is amended to read as follows:

9 (b) Any person or discharge cleanup organization that
10 renders assistance in abating, containing, or removing pollution
11 from any unauthorized discharge of oil may receive compensation
12 from the fund for response costs, provided the commissioner
13 approves compensation prior to the assistance being rendered.
14 [~~Prior approval for compensation may be provided for in the state~~
15 ~~coastal discharge contingency plan.~~] The commissioner, on petition
16 and for good cause shown, may waive the prior approval
17 prerequisite.

18 SECTION 7. Section 40.104, Natural Resources Code, is
19 amended to read as follows:

20 Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.
21 (a) No action taken by any person or discharge cleanup
22 organization to abate, contain, or remove pollution from an
23 unauthorized discharge of oil, whether such action is taken
24 voluntarily, or pursuant to the national contingency plan [~~or state~~
25 ~~coastal discharge contingency plan~~], or pursuant to a discharge
26 response plan required under this chapter, or pursuant to the
27 request of an authorized federal or state official, or pursuant to

1 the request of the responsible person, shall be construed as an
2 admission of responsibility or liability for the discharge.

3 (b) No person or discharge cleanup organization that
4 voluntarily, or pursuant to the national contingency plan [~~or the~~
5 ~~state coastal discharge contingency plan~~], or pursuant to any
6 discharge response plan required under this chapter, or pursuant to
7 the request of an authorized federal or state official, or pursuant
8 to the request of the responsible person, renders assistance or
9 advice in abating, containing, or removing pollution from an
10 unauthorized discharge of oil is liable for response costs,
11 damages, or civil penalties resulting from acts or omissions
12 committed in rendering such assistance or advice, except for acts
13 or omissions of gross negligence or wilful misconduct.

14 SECTION 8. Subdivision (1), Subsection (a), Section 40.107,
15 Natural Resources Code, is amended to read as follows:

16 (1) In any action to recover natural resources
17 damages, the amount of damages established by the commissioner in
18 conjunction with the trustees [~~, according to the procedures and~~
19 ~~plans contained in the state coastal discharge contingency plan,~~]
20 shall create a rebuttable presumption of the amount of such
21 damages.

22 SECTION 9. Subdivisions (1) and (4), Subsection (c),
23 Section 40.107, Natural Resources Code, are amended to read as
24 follows:

25 (1) The commissioner, in conjunction with the
26 trustees, shall develop an inventory that identifies and catalogs
27 the physical locations, the seasonal variations in location, and

1 the current condition of natural resources; provides for data
2 collection related to coastal processes; and identifies the
3 recreational and commercial use areas that are most likely to
4 suffer injury from an unauthorized discharge of oil. The inventory
5 shall be completed by September 1, 1995 [~~and shall be incorporated~~
6 ~~into the state coastal discharge contingency plan after public~~
7 ~~review and comment~~].

8 (4) The commissioner shall adopt administrative
9 procedures and protocols for the assessment of natural resource
10 damages from an unauthorized discharge of oil. As developed
11 through negotiated rulemaking with the trustees and other
12 interested parties, the procedures and protocols shall require the
13 trustees to assess natural resource damages by considering the
14 unique characteristics of the spill incident and the location of
15 the natural resources affected. These procedures and protocols
16 shall be adopted by rule, by the trustee agencies after
17 negotiation, notice, and public comment, by June 1, 1994 [~~and~~
18 ~~shall be incorporated into the state coastal discharge contingency~~
19 ~~plan~~].

20 SECTION 10. Section 40.116, Natural Resources Code, is
21 amended to read as follows:

22 Sec. 40.116. AUDITS, INSPECTIONS, AND DRILLS. The
23 commissioner may subject a vessel subject to Section 40.114 of this
24 code [~~as a condition to being granted entry into any port in this~~
25 ~~state,~~] or a terminal facility to an announced or unannounced
26 audit, inspection, or drill to determine the discharge prevention
27 and response capabilities of the terminal facility or vessels. Any

1 vessel drill conducted by the commissioner shall be in cooperation
2 and conjunction with the United States Coast Guard, and the
3 commissioner's participation may not interfere with the schedule of
4 the vessel.

5 SECTION 11. Subsection (b), Section 40.151, Natural
6 Resources Code, is amended to read as follows:

7 (b) The coastal protection fund is established in the state
8 treasury to be used by the commissioner as a nonlapsing revolving
9 fund only for carrying out the purposes of this chapter and of
10 Subchapter H, Chapter 33. To this fund shall be credited all fees,
11 penalties, judgments, reimbursements, interest or income on the
12 fund, and charges provided for in this chapter and the fee revenues
13 levied, collected, and credited pursuant to this chapter. The fund
14 shall not exceed \$50 million.

15 SECTION 12. Subsection (a), Section 40.152, Natural
16 Resources Code, is amended to read as follows:

17 (a) Money in the fund may be disbursed for the following
18 purposes and no others:

19 (1) administrative expenses, personnel and training
20 expenses, and equipment maintenance and operating costs related to
21 implementation and enforcement of this chapter;

22 (2) response costs related to abatement and
23 containment of actual or threatened unauthorized discharges of oil
24 incidental to unauthorized discharges of hazardous substances;

25 (3) response costs and damages related to actual or
26 threatened unauthorized discharges of oil;

27 (4) assessment, restoration, rehabilitation, or

1 replacement of or mitigation of damage to natural resources damaged
2 by an unauthorized discharge of oil;

3 (5) in an amount not to exceed \$50,000 annually, the
4 small spill education program;

5 (6) in an amount not to exceed \$1,250,000 annually,
6 interagency contracts under Section 40.302;

7 (7) the purchase of response equipment under Section
8 40.105 within two years of the effective date of this chapter, in an
9 amount not to exceed \$4 million; thereafter, for the purchase of
10 equipment to replace equipment that is worn or obsolete;

11 ~~(8) [an inventory under Section 40.107, to be~~
12 ~~completed by September 1, 1995, in an amount not to exceed \$6~~
13 ~~million;~~

14 ~~[(9)]~~ other costs and damages authorized by this
15 chapter; ~~and~~

16 (9) ~~[(10)]~~ in an amount not to exceed the interest
17 accruing to the fund annually, erosion response projects under
18 Subchapter H, Chapter 33; and

19 (10) in conjunction with the Railroad Commission of
20 Texas, costs related to the plugging of abandoned or orphaned oil
21 wells located on state-owned submerged lands.

22 SECTION 13. Subdivision (3), Subsection (g), Section
23 40.254, Natural Resources Code, is amended to read as follows:

24 (3) ~~[A person who fails to comply with Subdivision (2)~~
25 ~~of this subsection waives the right to judicial review.]~~ On failure
26 of the person to comply with the order or file a petition for
27 judicial review ~~[Subdivision (2) of this subsection],~~ the

1 commissioner may refer the matter to the attorney general for
2 collection and enforcement.

3 SECTION 14. Subdivision (1), Subsection (h), Section
4 40.254, Natural Resources Code, is amended to read as follows:

5 (1) If a penalty is reduced or not assessed, the
6 commissioner shall~~+~~

7 [~~(A)~~] remit to the person charged the appropriate
8 amount of any penalty payment plus accrued interest~~+, or~~

9 [~~(B) execute a release of the bond if a~~
10 ~~supersedeas bond has been posted~~].

11 SECTION 15. Subdivisions (1), (2), and (3), Subsection (a),
12 Section 40.258, Natural Resources Code, are amended to read as
13 follows:

14 (1) The commissioner shall promulgate rules [~~and a~~
15 ~~state coastal discharge contingency plan~~] that, to the greatest
16 extent practicable, conform to the national contingency plan and
17 rules promulgated under federal law.

18 (2) The commissioner may impose requirements under
19 such rules [~~and the state coastal discharge contingency plan~~] that
20 are in addition to or vary materially from federal requirements if
21 the state interests served by the requirements substantially
22 outweigh the burdens imposed on those subject to the requirements.

23 (3) Any request for judicial review of any rule [~~or any~~
24 ~~provision of the state coastal discharge contingency plan based on~~
25 ~~Subdivision (1) or (2) of this subsection~~] must be filed in a
26 district court in Travis County within 90 days of the effective date
27 of the rule or plan challenged.

1 SECTION 16. Sections 40.006, 40.053, 40.110(f), 40.115,
2 40.117(b), 40.151(e), 40.254(g)(2), and 40.303, Natural Resources
3 Code, are repealed.

4 SECTION 17. This Act takes effect September 1, 2003.