

1-1 By: Armbrister S.B. No. 619
1-2 (In the Senate - Filed February 20, 2003; February 26, 2003,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 7, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 7, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 619 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to oil spill prevention and response.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (c), Section 40.002, Natural
1-13 Resources Code, is amended to read as follows:

1-14 (c) The legislature intends by this chapter to exercise the
1-15 police power of the state to protect its coastal waters and adjacent
1-16 shorelines by conferring upon the Commissioner of the General Land
1-17 Office the power to:

1-18 (1) prevent spills and discharges of oil by requiring
1-19 and monitoring preventive measures and response planning;

1-20 (2) provide for prompt response to abate and contain
1-21 spills and discharges of oil and ensure the removal and cleanup of
1-22 pollution from such spills and discharges; and

1-23 (3) ~~provide for development of a state coastal~~
1-24 ~~discharge contingency plan through planning and coordination with~~
1-25 ~~the Texas Natural Resource Conservation Commission to protect~~
1-26 ~~coastal waters from all types of spills and discharges; and~~

1-27 ~~[(4)]~~ administer a fund to provide for funding these
1-28 activities and to guarantee the prompt payment of certain
1-29 reasonable claims resulting from spills and discharges of oil.

1-30 SECTION 2. Subdivisions (13), (17), and (22), Section
1-31 40.003, Natural Resources Code, are amended to read as follows:

1-32 (13) "Hazardous substance" means any substance,
1-33 except oil, designated as hazardous by the Environmental Protection
1-34 Agency pursuant to the Comprehensive Environmental Response,
1-35 Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et
1-36 seq.) and designated by the Texas ~~Natural Resource Conservation~~
1-37 ~~Commission on Environmental Quality.~~

1-38 (17) "Oil" means oil of any kind or in any form,
1-39 including but not limited to crude oil, petroleum, fuel oil,
1-40 sludge, oil refuse, and oil mixed with wastes other than dredged
1-41 spoil, but does not include petroleum, including crude oil or any
1-42 fraction thereof, which is specifically listed or designated as a
1-43 hazardous substance under Subparagraphs (A) through (F) of Section
1-44 101(14) of the Comprehensive Environmental Response, Compensation,
1-45 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is
1-46 subject to the provisions of that Act, and which is so designated by
1-47 the Texas ~~Natural Resource Conservation~~ Commission on
1-48 Environmental Quality.

1-49 (22) "Response costs" means:

1-50 (A) with respect to an actual or threatened
1-51 discharge of oil, all costs incurred in an attempt to prevent,
1-52 abate, contain, and remove pollution from the discharge, including
1-53 costs of removing vessels or structures under this chapter, and
1-54 costs of any reasonable measures to prevent or limit damage to the
1-55 public health, safety, or welfare, public or private property, or
1-56 natural resources; or

1-57 (B) with respect to an actual or threatened
1-58 discharge of a hazardous substance, only costs incurred to
1-59 supplement the response operations of the Texas ~~Natural Resource~~
1-60 ~~Conservation~~ Commission on Environmental Quality.

1-61 SECTION 3. Section 40.005, Natural Resources Code, is
1-62 amended to read as follows:

1-63 Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL

2-1 RESPONSE AND CLEANUP. The General Land Office, under the direction
 2-2 and control of the commissioner, is the state's lead agency for
 2-3 initiating response to all actual or threatened unauthorized
 2-4 discharges of oil. In the event of an unauthorized discharge of a
 2-5 hazardous substance, nothing in this chapter shall preclude the
 2-6 Texas [~~Natural Resource Conservation~~] Commission on Environmental
 2-7 Quality from at the earliest time practicable assuming response and
 2-8 cleanup duties pursuant to Subchapter G, Chapter 26, Water Code[~~7~~
 2-9 ~~and the state coastal discharge contingency plan~~].

2-10 SECTION 4. Section 40.052, Natural Resources Code, is
 2-11 amended to read as follows:

2-12 Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the
 2-13 unauthorized discharge involves predominantly a hazardous
 2-14 substance, the Texas [~~Natural Resource Conservation~~] Commission on
 2-15 Environmental Quality shall carry out responsibility for
 2-16 abatement, containment, removal, and cleanup of the hazardous
 2-17 substances discharged, pursuant to Subchapter G, Chapter 26, Water
 2-18 Code[~~7~~, ~~and to the state coastal discharge contingency plan~~].

2-19 SECTION 5. Subsection (c), Section 40.101, Natural
 2-20 Resources Code, is amended to read as follows:

2-21 (c) In order to prevent duplication of effort among state
 2-22 agencies, the commissioner shall utilize the expertise of the Texas
 2-23 [~~Natural Resource Conservation~~] Commission on Environmental
 2-24 Quality on technical and scientific actions, including but not
 2-25 limited to:

2-26 (1) taking samples in the spill area;
 2-27 (2) monitoring meteorological conditions that may
 2-28 affect spill response operations; and
 2-29 (3) regulating disposal of spilled material.

2-30 SECTION 6. Subsection (b), Section 40.103, Natural
 2-31 Resources Code, is amended to read as follows:

2-32 (b) Any person or discharge cleanup organization that
 2-33 renders assistance in abating, containing, or removing pollution
 2-34 from any unauthorized discharge of oil may receive compensation
 2-35 from the fund for response costs, provided the commissioner
 2-36 approves compensation prior to the assistance being rendered.
 2-37 [~~Prior approval for compensation may be provided for in the state~~
 2-38 ~~coastal discharge contingency plan.~~] The commissioner, on petition
 2-39 and for good cause shown, may waive the prior approval
 2-40 prerequisite.

2-41 SECTION 7. Section 40.104, Natural Resources Code, is
 2-42 amended to read as follows:

2-43 Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.
 2-44 (a) No action taken by any person or discharge cleanup
 2-45 organization to abate, contain, or remove pollution from an
 2-46 unauthorized discharge of oil, whether such action is taken
 2-47 voluntarily, or pursuant to the national contingency plan [~~or state~~
 2-48 ~~coastal discharge contingency plan~~], or pursuant to a discharge
 2-49 response plan required under this chapter, or pursuant to the
 2-50 request of an authorized federal or state official, or pursuant to
 2-51 the request of the responsible person, shall be construed as an
 2-52 admission of responsibility or liability for the discharge.

2-53 (b) No person or discharge cleanup organization that
 2-54 voluntarily, or pursuant to the national contingency plan [~~or the~~
 2-55 ~~state coastal discharge contingency plan~~], or pursuant to any
 2-56 discharge response plan required under this chapter, or pursuant to
 2-57 the request of an authorized federal or state official, or pursuant
 2-58 to the request of the responsible person, renders assistance or
 2-59 advice in abating, containing, or removing pollution from an
 2-60 unauthorized discharge of oil is liable for response costs,
 2-61 damages, or civil penalties resulting from acts or omissions
 2-62 committed in rendering such assistance or advice, except for acts
 2-63 or omissions of gross negligence or wilful misconduct.

2-64 SECTION 8. Subdivision (1), Subsection (a), Section 40.107,
 2-65 Natural Resources Code, is amended to read as follows:

2-66 (1) In any action to recover natural resources
 2-67 damages, the amount of damages established by the commissioner in
 2-68 conjunction with the trustees[~~7~~, ~~according to the procedures and~~
 2-69 ~~plans contained in the state coastal discharge contingency plan,~~

3-1 shall create a rebuttable presumption of the amount of such
3-2 damages.

3-3 SECTION 9. Subdivisions (1) and (4), Subsection (c),
3-4 Section 40.107, Natural Resources Code, are amended to read as
3-5 follows:

3-6 (1) The commissioner, in conjunction with the
3-7 trustees, shall develop an inventory that identifies and catalogs
3-8 the physical locations, the seasonal variations in location, and
3-9 the current condition of natural resources; provides for data
3-10 collection related to coastal processes; and identifies the
3-11 recreational and commercial use areas that are most likely to
3-12 suffer injury from an unauthorized discharge of oil. The inventory
3-13 shall be completed by September 1, 1995~~[, and shall be incorporated~~
3-14 ~~into the state coastal discharge contingency plan after public~~
3-15 ~~review and comment]~~.

3-16 (4) The commissioner shall adopt administrative
3-17 procedures and protocols for the assessment of natural resource
3-18 damages from an unauthorized discharge of oil. As developed
3-19 through negotiated rulemaking with the trustees and other
3-20 interested parties, the procedures and protocols shall require the
3-21 trustees to assess natural resource damages by considering the
3-22 unique characteristics of the spill incident and the location of
3-23 the natural resources affected. These procedures and protocols
3-24 shall be adopted by rule, by the trustee agencies after
3-25 negotiation, notice, and public comment, by June 1, 1994~~[, and~~
3-26 ~~shall be incorporated into the state coastal discharge contingency~~
3-27 ~~plan]~~.

3-28 SECTION 10. Section 40.116, Natural Resources Code, is
3-29 amended to read as follows:

3-30 Sec. 40.116. AUDITS, INSPECTIONS, AND DRILLS. The
3-31 commissioner may subject a vessel subject to Section 40.114 of this
3-32 code~~[, as a condition to being granted entry into any port in this~~
3-33 ~~state,]~~ or a terminal facility to an announced or unannounced
3-34 audit, inspection, or drill to determine the discharge prevention
3-35 and response capabilities of the terminal facility or vessels. Any
3-36 vessel drill conducted by the commissioner shall be in cooperation
3-37 and conjunction with the United States Coast Guard, and the
3-38 commissioner's participation may not interfere with the schedule of
3-39 the vessel.

3-40 SECTION 11. Subsection (b), Section 40.151, Natural
3-41 Resources Code, is amended to read as follows:

3-42 (b) The coastal protection fund is established in the state
3-43 treasury to be used by the commissioner as a nonlapsing revolving
3-44 fund only for carrying out the purposes of this chapter and of
3-45 Subchapter H, Chapter 33. To this fund shall be credited all fees,
3-46 penalties, judgments, reimbursements, interest or income on the
3-47 fund, and charges provided for in this chapter and the fee revenues
3-48 levied, collected, and credited pursuant to this chapter. The fund
3-49 shall not exceed \$50 million.

3-50 SECTION 12. Subsection (a), Section 40.152, Natural
3-51 Resources Code, is amended to read as follows:

3-52 (a) Money in the fund may be disbursed for the following
3-53 purposes and no others:

3-54 (1) administrative expenses, personnel and training
3-55 expenses, and equipment maintenance and operating costs related to
3-56 implementation and enforcement of this chapter;

3-57 (2) response costs related to abatement and
3-58 containment of actual or threatened unauthorized discharges of oil
3-59 incidental to unauthorized discharges of hazardous substances;

3-60 (3) response costs and damages related to actual or
3-61 threatened unauthorized discharges of oil;

3-62 (4) assessment, restoration, rehabilitation, or
3-63 replacement of or mitigation of damage to natural resources damaged
3-64 by an unauthorized discharge of oil;

3-65 (5) in an amount not to exceed \$50,000 annually, the
3-66 small spill education program;

3-67 (6) in an amount not to exceed \$1,250,000 annually,
3-68 interagency contracts under Section 40.302;

3-69 (7) the purchase of response equipment under Section

4-1 40.105 within two years of the effective date of this chapter, in an
4-2 amount not to exceed \$4 million; thereafter, for the purchase of
4-3 equipment to replace equipment that is worn or obsolete;

4-4 (8) ~~[an inventory under Section 40.107, to be~~
4-5 ~~completed by September 1, 1995, in an amount not to exceed \$6~~
4-6 ~~million;~~

4-7 ~~[(9)]~~ other costs and damages authorized by this
4-8 chapter; ~~[and]~~

4-9 (9) ~~[(10)]~~ in an amount not to exceed the interest
4-10 accruing to the fund annually, erosion response projects under
4-11 Subchapter H, Chapter 33; and

4-12 (10) in conjunction with the Railroad Commission of
4-13 Texas, costs related to the plugging of abandoned or orphaned oil
4-14 wells located on state-owned submerged lands.

4-15 SECTION 13. Subdivision (3), Subsection (g), Section
4-16 40.254, Natural Resources Code, is amended to read as follows:

4-17 (3) ~~[A person who fails to comply with Subdivision (2)~~
4-18 ~~of this subsection waives the right to judicial review.]~~ On failure
4-19 of the person to comply with the order or file a petition for
4-20 judicial review [Subdivision (2) of this subsection], the
4-21 commissioner may refer the matter to the attorney general for
4-22 collection and enforcement.

4-23 SECTION 14. Subdivision (1), Subsection (h), Section
4-24 40.254, Natural Resources Code, is amended to read as follows:

4-25 (1) If a penalty is reduced or not assessed, the
4-26 commissioner shall~~[-~~

4-27 ~~[(A)]~~ remit to the person charged the appropriate
4-28 amount of any penalty payment plus accrued interest~~[-or~~

4-29 ~~[(B) execute a release of the bond if a~~
4-30 ~~supersedeas bond has been posted].~~

4-31 SECTION 15. Subdivisions (1), (2), and (3), Subsection (a),
4-32 Section 40.258, Natural Resources Code, are amended to read as
4-33 follows:

4-34 (1) The commissioner shall promulgate rules ~~[and a~~
4-35 ~~state coastal discharge contingency plan]~~ that, to the greatest
4-36 extent practicable, conform to the national contingency plan and
4-37 rules promulgated under federal law.

4-38 (2) The commissioner may impose requirements under
4-39 such rules ~~[and the state coastal discharge contingency plan]~~ that
4-40 are in addition to or vary materially from federal requirements if
4-41 the state interests served by the requirements substantially
4-42 outweigh the burdens imposed on those subject to the requirements.

4-43 (3) Any request for judicial review of any rule ~~[or any~~
4-44 ~~provision of the state coastal discharge contingency plan based on~~
4-45 ~~Subdivision (1) or (2) of this subsection]~~ must be filed in a
4-46 district court in Travis County within 90 days of the effective date
4-47 of the rule or plan challenged.

4-48 SECTION 16. Sections 40.006, 40.053, 40.110(f), 40.115,
4-49 40.117(b), 40.151(e), 40.254(g)(2), and 40.303, Natural Resources
4-50 Code, are repealed.

4-51 SECTION 17. This Act takes effect September 1, 2003.

4-52 * * * * *