HOUSE RESEARCH ORGANIZATION bill analysis — 5/1/2003 — HB 1402 West (CSHB 1402 by Crabb)

SUBJECT:	Transferring oil-spill prevention and response to General Land Office
COMMITTEE:	Energy Resources — committee substitute recommended
VOTE:	5 ayes — West, Farabee, Canales, Crabb, B. Keffer 0 nays 2 absent — E. Jones, Delisi
WITNESSES:	For — *(Registered, but did not testify:)* Commissioner Jerry Patterson, General Land Office Against — None On — Greg Pollock, General Land Office; *(Registered, but did not testify:)* Joe Mayorga and John Tintera, Texas Railroad Commission; Robert Siddall, General Land Office

BACKGROUND: The Oil Spill Prevention and Response Act (OSPRA), codified in Natural Resources Code, ch. 40, designates the General Land Office (GLO) as lead agency in spill response and coordination, with on-site responsibility for coastal oil spills. Before enactment of OSPRA in 1991, the Texas Water Commission (TWC) had jurisdiction over oil-spill response. Under OSPRA, TWC retained jurisdiction over hazardous waste spills and upland oil spills. OSPRA incorporated an interagency memorandum of understanding between the TWC and the Texas Railroad Commission relating to small oil spills of less than 240 barrels in waters next to oil facilities, including offshore rigs, platforms, and pipelines.

Natural Resources Code, sec. 40.002 declares the intent to support and complement the federal Oil Pollution Act of 1990 and other federal law, specifically relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges. The U.S. Coast Guard has used area contingency plans to guide oil-spill response planning in implementing the Oil Pollution Act. The area contingency plans, which are part of the national contingency plan, cover the entire Texas coast.

DIGEST:

CSHB 1402 would amend OSPRA by eliminating the state coastal discharge contingency plan and all references to it. The bill also would repeal the provision that allows the RRC to respond to coastal oil spills that do not exceed 240 barrels from activities associated with exploration, development, or production of oil or gas within certain areas, as well as from transportation of oil or gas by pipeline.

In addition to current uses of money in the Coastal Protection Account, the fund could be used for costs related to plugging abandoned or orphaned oil wells on state-owned submerged lands. Interest or income on the funds could be credited to the account.

CSHB 1402 would repeal additional sections of OSPRA related to an interagency council for oil-spill response; general terms relating to the RRC's review of oil and gas activities and providing for reimbursing the RRC's costs; GLO's authority to deny entry into any port; a requirement to transfer revenue to the RRC for the oilfield cleanup fund when the Coastal Protection Account balance reaches $25 million; a provision requiring a supersedeas bond to the GLO as a prerequisite to judicial review; and authorization of the Oil Spill Oversight Council.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 1402 is an agreed proposal by the GLO and RRC to consolidate all oil-spill prevention and recovery efforts within the GLO. Its aim is to eliminate overlapping responsibilities with the Coast Guard that relate to oil-spill contingency plans, resulting in more effective and efficient government.

The bill would consolidate Texas' oil-spill prevention and response duties by allowing the GLO to assume the RRC's jurisdiction over small coastal spills of crude oil. It would allow use of funds in the Coastal Protection Account so that the two agencies could work together to plug abandoned or orphaned oil wells on state-owned submerged lands. The bill would repeal provisions related to the state coastal discharge contingency plan and other provisions to clarify OSPRA and conform it to other current law.

About 98 percent of all coastal oil spills fall within the GLO's current jurisdiction. CSHB 1402 would move all oil-spill recovery responsibility to the GLO to consolidate duties and to streamline regulation. The bill's changes would require no additional funds or employees for the GLO. The RRC voted unanimously on March 18 to support the consolidation.

The GLO could work with the RRC to plug abandoned or orphaned wells on state-owned submerged lands. At present, the GLO pays about $200,000 per year to perform this task under a contract with the RRC, using surface damages funds. CSHB 1402 would allow funds in the Coastal Protection Account to be used for this purpose. This provision would release surface damage funds for deposit to the credit of the Permanent School Fund, although the increase in costs to the Coastal Protection Account would offset any overall fiscal gain.

In implementing the federal Oil Pollution Act, the Coast Guard has developed area contingency plans to guide its oil-spill response planning. The GLO has participated in developing and implementing these plans. The GLO has not promulgated a state discharge contingency plan, because the area contingency plans cover the entire Texas coast and serve the same purpose. CSHB 1402 would eliminate references to the state contingency plan to prevent duplication of effort.

OPPONENTS SAY:

Eliminating the state coastal discharge contingency plan could have consequences in the future. A recent U.S. Supreme Court ruling (*Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)) raised questions about the federal Clean Water Act's jurisdiction over isolated wetlands. The Oil Pollution Act contains the same definition of isolated wetlands as in the Clean Water Act. If jurisdiction for isolated wetlands eventually were excluded from the Oil Pollution Act, and thus from area contingency plans, wetland areas around Houston and Galveston could go unprotected by such a change, absent a state contingency plan.

NOTES:

The committee substitute would add the provision allowing the GLO and RRC to use funds in the Coastal Protection Account to plug abandoned or orphaned wells on state-owned submerged lands.

The companion bill, SB 619 by Armbrister, passed the Senate by voice vote on April 30.