HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/30/2009

HB 3971
Ritter, et al.
(CSHB 3971 by Alvarado)

SUBJECT: Increased oil fees for coastal management and erosion response

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Bonnen, Farrar, Alvarado, Bolton, Hamilton, Homer, Orr, Paxton, Thibaut

0 nays

WITNESSES: For — *On committee substitute*: (*Registered, but did not testify*: Clint Smith, Town of South Padre Island)

Against — None

On — Jerry Patterson, General Land Office; *On committee substitute*: (*Registered, but did not testify*: Ken Kramer, Lone Star Chapter, Sierra Club)

BACKGROUND: Natural Resource Code, ch. 40 contains the Texas Oil Spill Prevention and Response Act of 1991. The act establishes a fee per barrel on all crude oil transferred to a Texas marine terminal. All fees are placed in the Coastal Protection Fund, which is used primarily for cleanup of pollution from unauthorized discharges of oil, for payment of damages from unauthorized discharges of oil, and for coastal erosion response projects. Coastal erosion projects may be funded in an amount no greater than the interest the fund receives annually. The coastal management fund may not exceed $50 million.

Sec. 40.155 sets the fee at 1 1/3 cents per barrel until the certified, uncommitted balance of the account reaches $20 million, when the fee collection is suspended. If the uncommitted, certified balance drops below $10 million, the comptroller recommences collection of the fee. If the uncommitted balance in the fund is less than $20 million, and an unauthorized discharge of more than 100,000 gallons of oil has occurred, the fee is increased to four cents until the uncommitted balance in the account reaches $20 million. This fee change must be implemented within 30 days of the spill.

DIGEST:

CSHB 3971 would increase from 1-1/3 cents to 3-1/2 cents the fee on each barrel of crude oil collected at a marine terminal in Texas for the Coastal Protection Fund. The bill would delete provisions placing an upper and lower cap on the protection fund at $20 million and $10 million, respectively.

The bill also would add the coastal management program as an eligible expense to be paid from the fun, and would delete a requirement that coastal erosion projects may be funded only through interest in the fund. The bill would remove the overall cap on the coastal management fund of $50 million.

CSHB 3971 would raise from four cents to 6-1/2 cents the fee to be charged in the event that the fund's balance was less than $20 million when an oil spill over 100,000 gallons occurred.

The bill would take effect September 1, 2009.

SUPPORTERS SAY:

CSHB 3971 would secure a critical, dedicated-funding source for coastal management and erosion response in Texas at minimal cost to oil producers. The bill would have no demonstrable effect on the price of gasoline, since the additional charge of about two cents per barrel would be only a fraction of the price of oil per barrel, but would generate an estimated $22.3 million dollars for the state starting in fiscal 2010. The 1-1/3 cent fee per barrel in state law has not been increased since 1991, and was actually decreased from the previous rate of two cents in 2005.

The additional revenue available through the bill would save the Texas Parks and Wildlife Department an estimated $12.5 million from the sporting goods sales tax in fiscal 2010 because an interagency contract with the General Land Office (GLO) to fund coastal programs no longer would be necessary and would save general revenue $1.5 million that would otherwise have gone to fund benefits included in program administration. In addition to these savings, an additional $8.8 million would be available for coastal management and erosion response plans starting in fiscal 2010.

CSHB 3971 would secure revenue for coastal management and erosion projects. Erosion along the state's coastline has reached severe levels, and about 64 percent of the Gulf Coast is experiencing critical, long-term beach erosion. Hurricanes have worsened coastal erosion in many areas.

The storm surge from Hurricane Ike relocated massive amounts of beach sand, moving it offshore and to bays and other destinations further inland.

The GLO is responsible for coordinating coastal management and erosion control in the state. Under current law, funding for coastal management and coastal erosion response is appropriated piecemeal — completed through an interagency transfer and through supplemental general revenue. Funding for these critical programs currently is subject to competing state needs for parks and fluctuations in available general revenue. Securing a stable source of revenue for the program would help ensure that key coastal erosion and management projects receive funding. The GLO completes a careful review process for all proposed coastal management and erosion projects, taking into account the project's effect on public access and potential incidental impacts on erosion elsewhere. Many of these important projects save the state future expenses that would otherwise be necessary to respond to severe, unabated erosion.

OPPONENTS SAY:

CSHB 3971 would increase fines on a single industry for a purpose that has no direct relation to that industry's operations. Since the fee increase would affect only oil producers that bring oil through Texas ports, it would constitute an unfair burden on an industry that generates considerable economic activity for the state. Oil producers have no direct effect on coastal erosion, and already pay a fee to fund a response to an oil spill. Coastal erosion projects should be funded by a mechanism that is related to those who have a direct impact on erosion and beach management.

Imposing an additional fee on each barrel of oil would have a significant impact on the industry. Though the fee increase may not seem large, it adds up when it is considered that Texas contains more than 25 percent of the nation's oil-refining capacity. The oil industry, like other sectors in the economy, is facing financial pressures that have resulted in revenue losses and reductions in force. Imposing a fee increase in a recession could affect the industry's ability to recover from recent major losses.

The added fee could create a competitive disadvantage for Texas ports and oil producers moving oil through those ports. Imposing an additional fee on oil that comes through Texas could result in a loss of some business to neighboring states with similar facilities. In the current recession, the state should avoid any policy that could result in the displacement of jobs and business.

OTHER OPPONENTS SAY:

CSHB 3971 would provide additional funding for coastal erosion response projects without providing a means for discerning or controlling which types of projects are funded. Some erosion response structures, such as hard structures, may interfere with public access to and use of public beaches, and could be very difficult to remove if they proved ineffective or detrimental in the future. The bill should clarify which erosion response and coastal management projects may be funded through the revenue made available.

NOTES:

According to the fiscal note, the committee substitute would have a net positive impact to general revenue of $28.1 million for fiscal 2010-11. The LBB estimates the bill would provide $47.5 million in total additional revenue to the state for fiscal 2010-11. The fiscal note assumes that funding currently appropriated to funding coastal programs, including an interagency contract with the Parks and Wildlife Department at $12.6 million per year and general revenue to pay employee benefits associated with administering the program at $1.5 million per year, would be restored to general revenue. This restored funding would amount to $28.1 million in fiscal 2010-11, which would leave a net gain to the coastal protection fund of $19.3 million.

The bill as filed would have amended Tax Code, sec.15.801 to require that 20 percent of the proceeds from the sporting goods sales tax be credited to the GLO for the coastal erosion response account.

The companion bill, SB 539 by Estes, has been referred to the Senate Finance Committee.