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SENATE

{ REPORT
110-403

A BILL TO AMEND THE OIL POLLUTION ACT OF 1990 TO IMPROVE THAT ACT, AND FOR OTHER PURPOSES

JUNE 27, 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

[To accompany S. 1566]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1566) to amend the Oil Pollution Act of 1990 to improve that Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

The Oil Pollution Act (33 U.S.C. 2701 et seq.) was originally enacted in 1990 following the Exxon Valdez spill in Alaska's Prince William Sound. The Act authorized expenditures from the Oil Spill Liability Trust Fund (Fund) that was established by Congress in 1986. The Fund, which is managed by the Coast Guard through the National Pollution Funds Center, was capitalized by a \$0.05 tax on each barrel of oil produced or imported in the United States. The tax sunset in 1995; at the time the Fund reached \$1 billion. In 2005, the Energy Policy Act reauthorized collection of the tax, in response to recent major spills, including potential claims arising from spills caused by Hurricane Katrina that could have threatened to drain the Fund's balance.

The Fund consists of two components, the Emergency Fund and the Principal Fund. The Emergency Fund is authorized each year and makes \$50 million available to the President to respond to spills without congressional appropriation. Further, the Emergency

Fund is used by the Federal trustees to initiate natural resource damage assessments.

The Principal Fund is capitalized through four mechanisms: The barrel tax, interest on the Fund, cost recoveries, and penalties. The Fund reimburses States who are usually the first on scene and engage in the initial cleanup of the site. The Fund then seeks reimbursement from parties found to be responsible for spills. Finally, several Federal statutes impose penalties upon responsible parties. Such penalties are paid into the Fund. The Oil Pollution Act includes statutory liability limits for responsible parties of up to \$350 million for any onshore facility or deepwater port. For spills occurring at offshore facilities other than deepwater ports, responsible parties are liable for the total of all removal costs plus \$75 million. Further, there are specific limits for vessels based on the type and size of those vessels. Any cleanup costs above these limits are eligible to be paid by the Fund.

The Principal Fund's two primary expenses include claims by any person or entity that has incurred removal costs or damages due to an oil spill, and appropriations to Federal agencies and other organizations, including the Denali Commission and the Prince William Sound Oil Spill Recovery Institute. Agency disbursements are intended to fund research and development related to oil spill prevention and response, as well as oil-spill statute administration and enforcement.

SECTION-BY-SECTION ANALYSIS

Section 1. Audits and reports

Audits

Beginning April 30th of the year enacted, and every 2 years thereafter, the President will provide the Senate Committees on Commerce, Science, Transportation, and Environment and Public Works, as well as the House of Representatives Committee on Transportation and Infrastructure, with an audit conducted by the Comptroller General of the United States. This audit shall include a detailed accounting of all disbursements exceeding \$100,000, made by the National Pollution Funds Center from the Fund and which are administered and managed by the receiving agencies, including final payments made through agencies, contractors, and subcontractors.

Reports

Beginning February 28th of the fiscal year enacted and each February 28th thereafter, the Secretary, the Secretary of Interior, the Secretary of Transportation, the Administrator of the EPA, and the heads of other Federal agencies that receive in excess of \$100,000 from the Fund during the preceding fiscal year shall report to the President, describing how they used those funds for oil pollution liability, compensation, prevention, preparedness and removal, natural resource damage assessment and restoration, oil pollution research and development, and other oil pollution related activities. The report shall be made available to the public through the National Pollution Funds Center Website.

Authorization of Appropriations

The bill authorizes such sums as are necessary to carry out such audits.

DISCUSSION

The Fund is dispersed to a variety of Federal agencies, as well as private entities, to reimburse or finance expenditures related specifically to responding to and preventing oil spills; therefore, it is necessary to track disbursements from the fund in order to ensure that the funds are being properly utilized. While the Coast Guard tracks disbursements it makes from the Fund, each federal agency receiving the disbursements is responsible for its own accounting of how the funds are actually spent, and private entities. The legislation will provide transparency as to how the Fund's disbursements are spent.

REGULATORY IMPACT STATEMENT

In compliance with section 11 (b)(2) of rule XXVI of the Standing Rules of the Senate, the Committee states that there are not expected to be significant costs to private entities under this legislation, and the Committee agrees with the Congressional Budget Office, which has concluded that the bill will not establish any private-sector mandates.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee finds, consistent with the determination of the Congressional Budget Office, that S. 1566 would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments. The Committee further agrees with the Congressional Budget Office that the bill does not impose private sector mandates.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1566—A bill to amend the Oil Pollution Act of 1990 to improve that act

S. 1566 would establish additional reporting and auditing requirements for spending from the Oil Spill Liability Trust Fund (OSLTF). Under the bill, federal agencies that receive over \$100,000 a year from the fund would report to the President on how that money is used. In addition, the Comptroller General would conduct audits of all expenditures in excess of that amount made by the National Pollution Funds Center of the U.S. Coast Guard, which administers the fund. The OSLTF covers the costs of cleaning up oil spills.

Based on the costs of other audits and reports of this scope, CBO estimates that implementing S. 1566 would cost the Government Accountability Office, the Coast Guard, and other federal agencies

a total of about \$500,000 every two years. Enacting the bill would not affect revenues or direct spending.

S. 1566 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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OIL POLLUTION ACT OF 1990

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SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 1001. Definitions.
 Sec. 1002. Elements of liability.
 Sec. 1003. Defenses to liability.
 Sec. 1004. Limits on liability.
 Sec. 1005. Interest.
 Sec. 1006. Natural resources.
 Sec. 1007. Recovery by foreign claimants.
 Sec. 1008. Recovery by responsible party.
 Sec. 1009. Contribution.
 Sec. 1010. Indemnification agreements.
 Sec. 1011. Consultation on removal actions.
 Sec. 1012. Uses of the Fund.
 Sec. 1013. Claims procedure.
 Sec. 1014. Designation of source and advertisement.
 Sec. 1015. Subrogation.
 Sec. 1016. Financial responsibility.
 Sec. 1017. Litigation, jurisdiction, and venue.
 Sec. 1018. Relationship to other law.
 Sec. 1019. State financial responsibility.
 Sec. 1020. Application.
 Sec. 1021. *Audits and reports.*

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TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 1001. DEFINITIONS.

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SEC. 1020. APPLICATION.

This Act shall apply to an incident occurring after the date of the enactment of this Act.

SEC. 1021. AUDITS AND REPORTS.

(a) *AUDITS.*—Not later than April 30 of the fiscal year in which this section is enacted, and every 2 years thereafter, the President shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an audit conducted by the Comptroller General of the United States that includes a detailed accounting of all funds from the Fund in excess of \$100,000 that are—

- (1) *disbursed by the National Pollution Funds Center; and*
- (2) *administered and managed by the receiving agencies, including final payments made through agencies, contractors, and subcontractors.*

(b) *REPORTS.*—Not later than February 28 of the fiscal year in which this section is enacted, and every February 28 thereafter, the Secretary, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the heads of any other Federal agencies that, during the preceding fiscal year, received funds from the Fund in excess of \$100,000, shall—

- (1) *provide to the President a report accounting for the uses of the funds by the Federal agency, including a description of ways in which those uses relate to—*

- (A) *oil pollution liability, compensation, prevention, preparedness, and removal;*
- (B) *natural resource damage assessment and restoration;*
- (C) *oil pollution research and development; and*
- (D) *other oil pollution-related activities; and*

- (2) *make each report available to the public and other interested parties via the Internet website of the National Pollution Funds Center.*

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated such sums as are necessary to carry out this section.

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