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SENATE

{ REPORT
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TO AMEND THE OIL POLLUTION ACT OF 1990 TO IMPROVE THAT ACT, AND FOR OTHER PURPOSES.

JUNE 29, 2006.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany S. 2023]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2023) to amend the Oil Pollution Act of 1990 to improve that Act, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, 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 was originally enacted in 1990 following the *Exxon Valdez* spill in Alaska's Prince William Sound.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 sunsetted in 1995 once the Fund reached \$1 billion.

In a report to Congress on May 12, 2005 the Coast Guard expressed concern that the Fund could run out of money in 2009. In response to the Coast Guard report, the Energy Policy Act of 2005 reinstated the barrel tax effective April 2006 with the understanding that it will expire in either 2014, or in any calendar quarter when the balance of the Fund exceeds \$2.7 billion. In April of 2006, the balance in the Fund was \$662 million. The National Pol-

lution Funds Center estimates that the reinstated tax revenue will raise that balance to \$829 million in 2014. The tax is estimated to raise \$88 million in fiscal year 2006 to a high of \$244 million in fiscal year 2013 before expiring in 2014. This estimate, however, does not account for claims arising from two hurricanes that struck the Gulf Coast in 2005, Hurricane Katrina and Hurricane Rita.

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 tank vessels based on the size of those vessels. Any cleanup costs above these limits are 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, as well as oil-spill statute administration and enforcement.

SECTION-BY-SECTION ANALYSIS

Section 1. Audits and reports

SUMMARY

(a) 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.

(b) 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.

(c) 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 insure that the funds are being properly utilized. The legislation will provide transparency as to how the Fund's disbursements are being spent.

LEGISLATIVE HISTORY

On November 16, 2005, Senator Inhofe introduced S. 2023, which was cosponsored by Senator Thune. The bill was received, read twice and referred to the Senate Committee on Environment and Public Works. The committee met on May 23, 2006 to consider the bill. During consideration of the bill, an amendment in the nature of a substitute offered by Senator Inhofe was agreed to by voice vote. S. 2023 was ordered favorably reported, as amended, by voice vote.

HEARINGS

No committee hearings were held on S. 2023.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2023 on May 23, 2006. During consideration of the bill, an amendment in the nature of a substitute offered by Senator Inhofe was agreed to by voice vote. The bill was ordered favorably reported, as amended, by voice vote. No roll call votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with Section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 2023 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 2023 would not impose Federal intergovernmental unfunded mandates on State, local or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

S. 2023, A bill to amend the Oil Pollution Act of 1990 to improve that act, As ordered reported by the Senate Committee on Environment and Public Works on May 23, 2006

S. 2023 would require the President to provide the Congress with a biennial audit (to be conducted by the Comptroller General) of certain expenditures from the Oil Spill Liability Trust Fund. Based on the costs of other audits of this scope, CBO estimates that preparing the required reports and audits would cost the Government Accountability Office, the United States Coast Guard, and other Federal agencies a total of about \$500,000 every 2 years. We estimate that enacting the bill would not affect revenues or direct spending.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy 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:

OIL POLLUTION ACT OF 1990

AN ACT To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Oil Pollution Act of 1990”.

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 Committees on Commerce, Science, and Transportation and 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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