CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 27, 2010

S. 3305
Big Oil Bailout Prevention Unlimited Liability Act of 2010

As ordered reported by the Senate Committee on Environment and Public Works on June 30, 2010

SUMMARY

S. 3305 would amend the Oil Pollution Act of 1990 (OPA) to eliminate the limit on liability that owners or operators of certain off-shore drilling facilities (such as oil drilling platforms) face when an oil spill occurs. CBO estimates that eliminating the limit would probably result in a net loss of receipts to the government because it would probably lead to a reduction in offsetting receipts (a form of direct spending) from bonus bids that oil and gas operators pay to explore for oil and natural gas on the Outer Continental Shelf (OCS). Enacting the bill also would likely lead to a small reduction in direct spending from the Oil Spill Liability Trust Fund (OSLTF) for compensating those who suffer economic or environmental damages from future oil spills. In total, CBO estimates that enacting S. 3305 would increase direct spending by $50 million over the 2011-2020 period.[1] Because enacting the legislation would affect direct spending, pay-as-you-go procedures apply.

The bill also would require the United States Coast Guard (USCG) to change its regulation of companies' plans for responding to oil spills. CBO estimates that those provisions would cost $45 million over the 2011-2015 period, assuming appropriation of the amounts estimated to be necessary.

S. 3305 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on owners and operators of facilities and large vessels that produce, use, or transport oil and hazardous materials in or near waters of the United States. CBO estimates that the cost of the intergovernmental mandates would fall well below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). CBO cannot determine whether the aggregate cost of private-sector

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1. Different time periods apply in the Senate for its pay-as-you-go rule. CBO estimates that enacting S. 3305 would increase direct spending by $40 million over the 2010-2014 period and by $50 million over the 2010-2019 period.

mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation) because those costs would depend on future regulations.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 3305 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 950 (undistributed offsetting receipts).

	By Fiscal Year, in Millions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	10	15	10	5	5	5	*	*	*	*	45	50
Estimated Outlays	10	15	10	5	5	5	*	*	*	*	45	50
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	10	10	10	10	10	10	10	10	10	10	50	100
Estimated Outlays	5	10	10	10	10	10	10	10	10	10	45	95

Note: * = between -$500,000 and $500,000.

BASIS OF ESTIMATE

S. 3305 would amend OPA by eliminating the $75 million liability limit for damages caused by certain offshore oil facilities and expanding the responsibilities of the USCG for reviewing and approving companies' plans for responding to oil spills. CBO estimates that implementing this legislation would increase net direct spending by $50 million over the next 10 years and discretionary spending by $45 million over the 2011-2015 period, assuming appropriation of the necessary amounts.

For this estimate, CBO assumes that S. 3305 will be enacted in 2010 and that the authorized amounts will be appropriated each year. Estimates of spending are based on historical spending patterns for similar programs.

Background

OPA is one of several federal and state laws that determine civil liability for the adverse effects of oil spills. S. 3305 would modify the liability limits in that law for offshore facilities other than deepwater ports, retroactive to April 15, 2010.

Under OPA, the party responsible for discharging oil or other hazardous materials into navigable waters of the United States is liable for all of the cleanup costs associated with the spill, including mitigation of the impacts on natural resources. In addition, the responsible party is liable for some or all of the economic and natural resource damages stemming from the spill, subject to certain conditions specified in OPA.

The amount of a firm's liability for economic and natural resources damages under OPA is unlimited if the spill was caused by a violation of any applicable federal regulations or by gross negligence or willful misconduct. If no such violation occurred, OPA limits the responsible party's liability for economic and natural resources damages, depending on the type and size of vessel or facility that caused the spill. The current liability limit for offshore facilities (such as oil and gas platforms) is $75 million per incident. OPA also requires responsible parties to demonstrate their ability to pay potential cleanup costs and damage claims before receiving permits or other approvals to operate in affected areas. It includes statutory guidelines for determining the amount of those financial assurances and sets a $150 million limit on the amount of assurance required for offshore oil and gas facilities. Financial assurances can take different forms, including self-insurance, indemnification by another party, insurance policies, and other similar commitments.

Above the liability limits for private firms specified in OPA, the OSLTF is available to pay up to $1 billion per incident for any additional economic and natural resources damages caused by an oil spill. The OSLTF is funded by an 8-cent tax on each barrel of oil produced in or imported to the United States. Such spending is not subject to appropriation. The OSLTF is also available for emergency response to oil spills or when the responsible party cannot be determined. In 2009, payments for damages from the OSLTF totaled $71 million.

According to the USCG, prior to 2010, there have been a few oil spills that exceeded the liability limits specified in OPA. None of those spills has been from an offshore facility. Most have been from vessels transporting oil. The Deepwater Horizon spill in the Gulf of Mexico, which began on April 20, 2010, is the first offshore oil spill since OPA was enacted that will involve damage claims exceeding $75 million.

Direct Spending

Enacting S. 3305 would affect direct spending because removing the liability limit would probably reduce offsetting receipts (a form of direct spending) from bonus bids that oil and gas operators pay to explore leases on the OCS, particularly in the next few years as the industry adapts to the consequences of the change in law. Also, the legislation would probably reduce outlays slightly from the OSLTF for claims that otherwise would have been paid by the federal government because they exceeded the $75 million limit on economic and natural resource damage claims contained in current law. On balance, CBO estimates that those changes would increase net direct spending by about $50 million over the 2011-2020 period.

Offsetting Receipts from OCS Leases. The federal government leases the rights to develop the oil and gas resources on the OCS in exchange for payments of a bonus bid when the lease is awarded, annual rental fees on nonproducing leases, and annual royalties based on the value of any production. Based on the production and price assumptions used in CBO's March baseline, offsetting receipts from oil and gas leases on the OCS are projected to total more than $100 billion over the next 10 years. CBO estimates that enacting S. 3305 would reduce offsetting receipts from OCS leases by about $50 million over the 2011-2020 period because companies bidding on leases would likely reduce their bids because of the concern that they would face an increase in their potential liability for offshore operations. The size (but not the direction) of that budgetary impact is uncertain, and the cost could be smaller or significantly larger than our estimate.

CBO estimates that removing the $75 million liability limit would not significantly change assessments of the economic value of most OCS leases. The legislation would not affect some of the largest sources of liability—those stemming from cleanup costs or from spills caused by noncompliance with federal regulations or by gross negligence. Similarly, some industry analysts have suggested that the Deepwater Horizon spill has become the de facto standard for liability, suggesting that many firms—particularly those that self-insure—would anticipate needing to cover all damages even in the absence of this legislation. Thus, CBO anticipates that removing the limit on liability for damages would primarily affect smaller firms that purchase insurance for such costs, which could reduce the economic profitability of certain leases. Based on historical trends in leasing activities, CBO estimates that such effects would reduce proceeds from bonus bids by less than 1 percent and that most of that impact would occur in the next five years as firms adjust to the new policy.

Federal Spending from the OSLTF. Because the occurrence of significant oil spills is subject to a great deal of uncertainty, CBO has estimated the budgetary impact of this legislation on the OSLTF on a probability basis. Industry experts and studies suggest that, in any one year, the chance of a large spill from an offshore facility involving more than 100,000 barrels of oil is very small. Experience also suggests that spills are likely to be caused by actions that would preclude the applicability of the liability limit (such as noncompliance with regulations or negligence).

In the case of the Deepwater Horizon spill in the Gulf of Mexico, the responsible party has provided assurances that it will pay for all legitimate claims of damages over and above the $75 million limit and has pledged at least $20 billion for such damage claims. Thus, CBO estimates that making the provisions in S. 3305 retroactive to April 15, 2010, would not change the amount paid for damage claims by either the responsible party or the federal government. In the future, we expect that this provision would have a small impact on spending from the OSLTF.

Spending Subject to Appropriation

S. 3305 would require the USCG to evaluate companies' plans for responding to oil spills and certify that such plans are both technologically feasible and have been tested in a field situation. The USCG would require significant additional personnel with specific technological expertise to perform that work. Based on information from the USCG and historical spending for similar programs, CBO estimates that implementing the new requirements would cost $45 million over the 2011-2015 period, assuming appropriation of the necessary amounts.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 3305 as ordered reported by the Senate Committee on Environment and Public Works on June 30, 2010

	By Fiscal Year, in Millions of Dollars												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-2015	2010-2020
	NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	10	15	10	5	5	5	0	0	0	0	45	50

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 3305 would impose intergovernmental and private-sector mandates as defined in UMRA on owners and operators of facilities and large vessels that produce, use, or transport oil and hazardous materials in or near waters of the United States. CBO estimates that the cost of the intergovernmental mandates would fall well below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation) because it would depend on future regulations.

Mandates That Apply to Both Public and Private Entities

The bill would require that owners and operators of facilities and large vessels that could discharge oil or hazardous materials into waters of the United States include additional information in their spill response plans. Affected entities would include oil refineries, tugboats, oil tankers, and ferries. According to information from the USCG, Environmental Protection Agency, and Pipeline and Hazardous Materials Safety Administration, owners and operators of about 30,000 onshore facilities and vessels currently submit response plans. The cost of the mandate would be any additional amounts that the mandated entities would have to spend to prepare plans. Because the costs of the requirement would depend on future regulations, CBO cannot determine the cost of the mandate on private-sector entities. Because of the relatively small number of public vessels affected, however, CBO estimates the cost to state and local governments would be small.

Mandates That Apply to Private Entities Only

By retroactively eliminating the liability limit for oil spills from offshore facilities, the bill would place a mandate on owners and operators of any such facilities that will have or have had an oil spill between April 15, 2010, and the date of enactment of S. 3305. Because the chances of another large spill occurring before enactment are very small, CBO assumes that the only affected spill would be the Deepwater Horizon spill. Based on information from industry testimony, CBO estimates that the mandate would not impose any incremental costs on the owners or operators of offshore facilities because it would not change the amount paid by the responsible parties.

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