

111TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Outer Continental Shelf Lands Act to require lessees to provide certain financial protections, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. BEGICH introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## A BILL

To amend the Outer Continental Shelf Lands Act to require lessees to provide certain financial protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Outer Continental  
5 Shelf Financial Protection Act of 2010”.

6 **SEC. 2. REQUIREMENT FOR FINANCIAL PROTECTION.**

7 (a) IN GENERAL.—The Outer Continental Shelf  
8 Lands Act (43 U.S.C. 1331 et seq.) is amended by adding  
9 at the end the following:

1 **“SEC. 32. REQUIREMENT FOR FINANCIAL PROTECTION.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) FUND.—The term ‘Fund’ means the Oil  
4 Spill Recovery Fund established by subsection (f).

5 “(2) INCIDENT.—The term ‘incident’ means  
6 any occurrence or series of occurrences having the  
7 same origin involving an offshore facility that results  
8 in the discharge of oil or other mineral.

9 “(3) OFFSHORE FACILITY.—The term ‘offshore  
10 facility’ means any structure, group of structures,  
11 equipment, device, or vessel used for the exploration,  
12 development, or production of minerals from sub-  
13 merged land.

14 “(4) PUBLIC LIABILITY.—The term ‘public li-  
15 ability’ means any legal liability arising out of or re-  
16 sulting from an incident, including, at a minimum,  
17 strict liability for economic damages described in  
18 section 1002(b)(2) of the Oil Pollution Act of 1990  
19 (33 U.S.C. 2702(b)(2)).

20 “(b) REQUIREMENT.—As a condition of each mineral  
21 lease covering submerged land of the outer Continental  
22 Shelf, the Secretary shall require the lessee to have and  
23 maintain financial protection of such type and in such  
24 amounts as the Secretary shall require to cover any legal  
25 liability arising out of the discharge of oil or other min-  
26 erals resulting from the exploration, development, or pro-

1 duction of minerals from submerged land covered by the  
2 lease.

3 “(c) AMOUNT AND TYPE OF FINANCIAL PROTEC-  
4 TION.—

5 “(1) PRIMARY FINANCIAL PROTECTION.—

6 “(A) IN GENERAL.—Subject to subpara-  
7 graphs (B) and (C), the amount of primary fi-  
8 nancial protection required under this section  
9 shall be the amount of liability insurance avail-  
10 able from private sources.

11 “(B) LESSER AMOUNT.—

12 “(i) IN GENERAL.—Subject to clause  
13 (iii), the Secretary may, by rule, establish  
14 a lesser amount of primary financial pro-  
15 tection taking into consideration the loca-  
16 tion of the lease and other factors per-  
17 taining to the hazard.

18 “(ii) REVISION.—Not later than 3  
19 years after the date on which a rule under  
20 clause (i) is issued, and every 3 years  
21 thereafter, the Secretary shall review the  
22 rule to consider whether the amount of pri-  
23 mary financial protection should be ad-  
24 justed to reflect market conditions, subject  
25 to clause (iii).

1                   “(iii) MINIMUM.—The amount of pri-  
2                   mary financial protection established under  
3                   clause (i) or (ii) shall be at least  
4                   \$250,000,000.

5                   “(C) TYPES.—The primary financial pro-  
6                   tection—

7                   “(i) may include private insurance,  
8                   private contractual indemnities, self-insur-  
9                   ance, or other proof of financial responsi-  
10                  bility, or a combination of such measures;  
11                  and

12                  “(ii) shall be subject to such terms  
13                  and conditions as the Secretary may, by  
14                  rule, regulation, or order, prescribe.

15                  “(2) SECONDARY FINANCIAL PROTECTION.—

16                  “(A) IN GENERAL.—In addition to the pri-  
17                  mary financial protection required under para-  
18                  graph (1), the Secretary shall require the lessee  
19                  to have and maintain private liability insurance  
20                  under an industry retrospective rating plan that  
21                  provides for premium charges deferred in whole  
22                  or major part until public liability exceeds or  
23                  appears likely to exceed the level of the primary  
24                  financial protection required of the lessee under  
25                  paragraph (1).

1           “(B) LIMITATION ON AMOUNT.—Subject to  
2 subparagraph (D), the amount that may be  
3 charged to a lessee under this paragraph with  
4 respect to any incident shall not exceed the pro  
5 rata share of the lessee of the aggregate public  
6 liability arising out of the incident, as deter-  
7 mined by the Secretary, taking into account—

8           “(i) the volume of production from  
9 the leases and facilities of the lessee on the  
10 outer Continental Shelf;

11           “(ii) the size and number of leases on  
12 the outer Continental Shelf controlled by  
13 the lessee; and

14           “(iii) the size and number of offshore  
15 facilities controlled by the lessee on the  
16 outer Continental Shelf.

17           “(C) OPT-OUT PROVISION.—A lessee may  
18 petition the Secretary to opt out of the require-  
19 ment for the industry retrospective rating plan  
20 described in subparagraph (A) for the sec-  
21 ondary level of financial protection by providing  
22 to the Secretary the same types of evidence of  
23 insurance or assurance as described in para-  
24 graph (1)(C)(i) for primary financial protection.

1           “(D) LIABILITY LIMIT PER INCIDENT.—

2           The per incident limit on public liability under  
3           this paragraph shall not exceed  
4           \$5,000,000,000.

5           “(3) TERTIARY FINANCIAL PROTECTION.—

6           “(A) IN GENERAL.—In addition to the pri-  
7           mary financial protection required under para-  
8           graph (1) and the secondary financial protec-  
9           tion required under paragraph (2), the Sec-  
10          retary shall require the lessee to have and  
11          maintain private liability insurance under an in-  
12          dustry retrospective rating plan that provides  
13          for premium charges deferred in whole or major  
14          part until public liability exceeds or appears  
15          likely to exceed \$5,000,000,0000.

16          “(B) LIABILITY LIMIT PER INCIDENT.—

17          The per incident limit on public liability under  
18          this paragraph shall not exceed  
19          \$20,000,000,000.

20          “(d) COVERAGE OF OUTSTANDING INCIDENT LIABIL-  
21          ITY.—

22          “(1) IN GENERAL.—Subject to paragraph (2),  
23          if public liability for an incident exceeds  
24          \$20,000,000,000, the Secretary may prohibit any  
25          person from entering into a Federal oil or gas lease

1 or contract after the date of enactment of this sec-  
2 tion unless the person pays into the Fund, or posts  
3 a bond, in an amount equal to the difference be-  
4 tween, as determined by the Secretary as of the date  
5 of the application for the lease or contract—

6 “(A) the total of the outstanding liability  
7 of the person under section 1002 of the Oil Pol-  
8 lution Act of 1990 (33 U.S.C. 2702) (without  
9 regard to any liability limit under section 1004  
10 of that Act (33 U.S.C. 2704)) and any removal  
11 costs incurred by, or on behalf of, the person,  
12 with respect to any incident occurring before,  
13 on, or after the date of enactment of this sec-  
14 tion for which the person has outstanding liabil-  
15 ity; and

16 “(B) \$20,000,000,000.

17 “(2) CONSIDERATIONS.—The Secretary may re-  
18 quire payment into the Fund or posting of a bond  
19 in accordance with paragraph (1) if the Secretary  
20 determines that—

21 “(A) the person has sufficient assets to  
22 make the payment or post the bond; and

23 “(B) the payment or bond would serve a  
24 public purpose.

1           “(3) NO EFFECT ON OTHER LIABILITY.—Pay-  
2           ment into the Fund or posting of a bond in accord-  
3           ance with paragraph (1) does not, with respect to  
4           the applicable incident—

5                   “(A) limit any civil or criminal liability of  
6           the person; or

7                   “(B) determine or affect an appropriate  
8           level of claims or damages.

9           “(e) FUND.—

10                   “(1) IN GENERAL.—There is established in the  
11           Treasury of the United States a fund to be known  
12           as the ‘Oil Spill Recovery Fund’ to be administered  
13           by the Secretary, to be available without fiscal year  
14           limitation and without being subject to appropria-  
15           tion, for payment of covered removal costs and dam-  
16           ages described in section 1002 of the Oil Pollution  
17           Act of 1990 (33 U.S.C. 2702) associated with any  
18           incident.

19                   “(2) TRANSFERS TO FUND.—

20                   “(A) IN GENERAL.—The Fund shall con-  
21           sist of such amounts as are appropriated to the  
22           Fund under subparagraph (B).

23                   “(B) FEES.—There are appropriated to  
24           the Fund, out of funds of the Treasury not oth-  
25           erwise appropriated, amounts equivalent to

1 amounts collected as fees and received in the  
2 Treasury under subsection (d)(1).

3 “(3) REPAYMENT.—

4 “(A) IN GENERAL.—In the case of any  
5 person who has paid into the Fund under sub-  
6 section (d)(1), on the date described in sub-  
7 paragraph (B), the Secretary shall transfer to  
8 the person an amount equal to—

9 “(i) the amount of unexpended funds  
10 of the person in the Fund; plus

11 “(ii) any accumulated interest on  
12 those funds.

13 “(B) DATE.—The date on which amounts  
14 described under subparagraph (A) shall be re-  
15 paid is the earlier of—

16 “(i) 5 years after the date on which  
17 the amounts were paid into the Fund; and

18 “(ii) the date on which the Secretary  
19 makes a formal determination that all Fed-  
20 eral and State natural resource damage as-  
21 sessments and all outstanding civil claims  
22 relating to the incident for which the  
23 amounts were paid have been satisfied.

1           “(4) PROHIBITION.—Amounts in the Fund may  
2 not be made available for any purpose other than a  
3 purpose described in paragraph (1).

4           “(5) QUARTERLY REPORTS.—

5           “(A) IN GENERAL.—Not later than 4 times  
6 during of each fiscal year beginning with fiscal  
7 year 2010, the Secretary shall submit to the  
8 Committee on Appropriations of the House of  
9 Representatives, the Committee on Appropria-  
10 tions of the Senate, the Committee on Energy  
11 and Natural Resources of the Senate, and the  
12 Committee on Resources of the House of Rep-  
13 resentatives a report on the operation of the  
14 Fund during the fiscal year.

15           “(B) CONTENTS.—Each report shall in-  
16 clude, for the fiscal year covered by the report,  
17 the following:

18           “(i) A statement of the amounts de-  
19 posited into the Fund.

20           “(ii) A description of the expenditures  
21 made from the Fund for the fiscal year, in-  
22 cluding the purpose of the expenditures.

23           “(iii) Recommendations for additional  
24 authorities to fulfill the purpose of the  
25 Fund.



1           “(38) a separate statement for the Oil Spill Re-  
2           covery Fund established under section 32(e) of the  
3           Outer Continental Shelf Lands Act, which shall in-  
4           clude the estimated amount of deposits into the  
5           Fund, obligations, and outlays from the Fund.”.