

92d Congress }
2d Session }

COMMITTEE PRINT

**SECTION-BY-SECTION ANALYSIS OF THE
PROPOSED ACT CONCERNING COMPENSATION
FOR OIL POLLUTION DAMAGE**

H.R. 16669

TO IMPLEMENT THE INTERNATIONAL CONVENTION
ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE
AND THE INTERNATIONAL CONVENTION ON THE
ESTABLISHMENT OF AN INTERNATIONAL FUND FOR
OIL POLLUTION DAMAGE



SEPTEMBER 21, 1972

Prepared by the executive branch for the use of the Committee on
Foreign Affairs

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1972

83-750

GOVERNMENT

Storage

KSU LIBRARIES



A11900 911788

COMMITTEE ON FOREIGN AFFAIRS

THOMAS E. MORGAN, Pennsylvania, *Chairman*

CLEMENT J. ZABLOCKI, Wisconsin
WAYNE L. HAYS, Ohio
L. H. FOUNTAIN, North Carolina
DANTE B. FASCELL, Florida
CHARLES C. DIGGS, Jr., Michigan
CORNELIUS E. GALLAGHER, New Jersey
ROBERT N. C. NIX, Pennsylvania
JOHNS. MONAGAN, Connecticut
DONALD M. FRASER, Minnesota
BENJAMIN S. ROSENTHAL, New York
JOHN C. CULVER, Iowa
LEE H. HAMILTON, Indiana
ABRAHAM KAZEN, Jr., Texas
LESTER L. WOLFF, New York
JONATHAN B. BINGHAM, New York
GUS YATRON, Pennsylvania
ROY A. TAYLOR, North Carolina
JOHN W. DAVIS, Georgia
MORGAN F. MURPHY, Illinois
RONALD V. DELLUMS, California
OGDEN R. REID, New York

WILLIAM S. MAILLIARD, California
PETER H. B. FRELINGHUYSEN, New Jersey
WILLIAM S. BROOMFIELD, Michigan
J. IRVING WHALLEY, Pennsylvania
H. R. GROSS, Iowa
EDWARD J. DERWINSKI, Illinois
VERNON W. THOMSON, Wisconsin
PAUL FINDLEY, Illinois
JOHN BUCHANAN, Alabama
SHERMAN P. LLOYD, Utah
J. HERBERT BURKE, Florida
SEYMOUR HALPERN, New York
GUY VANDER JAGT, Michigan
ROBERT H. STEELE, Connecticut
PIERRE S. DU PONT, Delaware
CHARLES W. WHALEN, Jr., Ohio
ROBERT B. (BOB) MATHIAS, California

ROY J. BULLOCK, *Staff Administrator*

(II)

FOREWORD

SEPTEMBER 21, 1972.

This section-by-section analysis of the proposed act to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (H.R. 16669) has been prepared by the executive branch for the use of the Members of the Committee on Foreign Affairs and of the House of Representatives in their consideration of the proposed legislation.

(III)

MEMORANDUM

DATE: 10/10/1917

TO: Mr. [Name] FROM: Mr. [Name]
SUBJECT: [Topic]
[Detailed memorandum text follows, including a list of items and a conclusion.]

END

CONTENTS

	Page
Foreword.....	III
I. Introduction.....	1
II. Executive Communication.....	1
III. Provisions of the bill.....	3
Title I. International Convention Civil Liability for Oil Pollution Damage.....	3
Title II. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.....	4
Title III. Apportionment of Claims and Subrogation; Exclusive Remedy; Effective Date.....	7

CONTENTS

Page

Introduction	1
Chapter I. The History of the United States	10
Chapter II. The Constitution of the United States	25
Chapter III. The Federal Government	40
Chapter IV. The State Governments	55
Chapter V. The Local Governments	70
Chapter VI. The Judiciary	85
Chapter VII. The Executive	100
Chapter VIII. The Legislative	115
Chapter IX. The Military	130
Chapter X. The Navy	145
Chapter XI. The Air Force	160
Chapter XII. The Space Program	175
Chapter XIII. The Atomic Energy Program	190
Chapter XIV. The Environmental Movement	205
Chapter XV. The Civil Rights Movement	220
Chapter XVI. The Women's Movement	235
Chapter XVII. The Gay Rights Movement	250
Chapter XVIII. The Disability Rights Movement	265
Chapter XIX. The Elder Rights Movement	280
Chapter XX. The Youth Rights Movement	295
Chapter XXI. The Animal Rights Movement	310
Chapter XXII. The Plant Rights Movement	325
Chapter XXIII. The Mineral Rights Movement	340
Chapter XXIV. The Water Rights Movement	355
Chapter XXV. The Air Rights Movement	370
Chapter XXVI. The Soil Rights Movement	385
Chapter XXVII. The Sun Rights Movement	400
Chapter XXVIII. The Moon Rights Movement	415
Chapter XXIX. The Mars Rights Movement	430
Chapter XXX. The Jupiter Rights Movement	445
Chapter XXXI. The Saturn Rights Movement	460
Chapter XXXII. The Uranus Rights Movement	475
Chapter XXXIII. The Neptune Rights Movement	490
Chapter XXXIV. The Pluto Rights Movement	505
Chapter XXXV. The Dwarf Planet Rights Movement	520
Chapter XXXVI. The Asteroid Rights Movement	535
Chapter XXXVII. The Comet Rights Movement	550
Chapter XXXVIII. The Meteor Rights Movement	565
Chapter XXXIX. The Solar Wind Rights Movement	580
Chapter XL. The Cosmic Microwave Background Rights Movement	595
Chapter XLI. The Dark Matter Rights Movement	610
Chapter XLII. The Dark Energy Rights Movement	625
Chapter XLIII. The Big Bang Rights Movement	640
Chapter XLIV. The Universe Rights Movement	655
Chapter XLV. The Multiverse Rights Movement	670
Chapter XLVI. The Parallel Universes Rights Movement	685
Chapter XLVII. The Alternate Realities Rights Movement	700
Chapter XLVIII. The Virtual Reality Rights Movement	715
Chapter XLIX. The Augmented Reality Rights Movement	730
Chapter L. The Artificial Intelligence Rights Movement	745
Chapter LI. The Robotics Rights Movement	760
Chapter LII. The Cyborg Rights Movement	775
Chapter LIII. The Transhumanism Rights Movement	790
Chapter LIV. The Posthumanism Rights Movement	805
Chapter LV. The Singularity Rights Movement	820
Chapter LVI. The Omega Point Rights Movement	835
Chapter LVII. The Heat Death Rights Movement	850
Chapter LVIII. The Big Crunch Rights Movement	865
Chapter LIX. The Big Rip Rights Movement	880
Chapter LX. The Heat Death Rights Movement	895

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ACT CONCERNING COMPENSATION FOR OIL POLLUTION DAMAGE

I. INTRODUCTION

The proposed legislation was transmitted to the Speaker of the House of Representatives by Executive Communication 2324, dated September 8, 1972, and referred to the Committee on Foreign Affairs. The Honorable Thomas E. Morgan, chairman of the committee, thereafter on September 14, 1972, introduced the bill H.R. 16669, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

II. EXECUTIVE COMMUNICATION

Following is the text of the executive communication, transmitting the proposed legislation, which was referred to the Committee on Foreign Affairs, September 12, 1972:

DEPARTMENT OF STATE,
Washington, D.C., September 8, 1972.

HON. CARL ALBERT,
*Speaker of the House,
House of Representatives,
Washington, D.C.*

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed act, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

The proposed act would incorporate in domestic law, provisions embodied in the two Conventions establishing a regime for prevention of and compensation for oil pollution damage from tankers. The International Convention on Civil Liability for Oil Pollution Damage, which was negotiated in 1969 at a conference convened by the Intergovernmental Maritime Consultative Organization (IMCO), has been favorably reported to the Senate by the Senate Foreign Relations Committee. Action by the Senate is pending. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, also an IMCO Convention, has been transmitted to the Senate for advice and consent. The submission of draft legislation at this time is in accord with Executive Branch intention of seeking legislative implementation at the earliest possible time.

Title I of the proposed act implements provisions of the Civil Liability Convention making a tanker owner strictly liable to governments and private persons for oil pollution damage in the territory, including the territorial sea, of the United States or any other country party to the Civil Liability Convention, and for preventive measures, wherever taken, in respect of such damage. An owner may limit his liability to the lesser of \$144¹ per ton or \$15,120,000¹ by constituting a fund in the amount of his liability limit in the appropriate court. The act also requires that the owner of a vessel capable of or actually carrying more than 2,000 tons of oil in bulk as cargo carry insurance or another guarantee of financial security in the amount of the limit which may be applied to his liability.

Title II of the act implements the provisions of the Compensation Fund Convention making the Compensation Fund (an international entity) strictly liable up to \$32,400,000 per incident for oil pollution damage insofar as that amount exceeds applicable limits in the Civil Liability Convention and for the entire amount in respect of certain incidents of damage where the owner may avail himself of a defense under that Convention. The Compensation Fund will be financed by contributions levied on receivers of oil importing more than 150,000 tons of contributing oil on the basis of a fixed sum per ton of oil, set on the basis of need from time to time.

Title II also implements the provisions of the Compensation Fund Convention which provides for the indemnification by the Fund of a portion of the liability of the owner or his guarantor under the Liability Convention. The amount which may be indemnified is that portion of liability which exceeds \$108 per ton or \$9,000,000, whichever is the less, and which does not exceed \$144 per ton or \$15,120,000, whichever is the less. The obligation to indemnify is subject to defeat if the incident causing the pollution damage arose from the willful misconduct of the owner or, to the proportionate extent the incident, through the actual fault or privity of the owner, was caused by the ship's failure at the time of the incident to comply with the provisions of named IMCO Conventions which operate to have a pollution prevention effect.

Title III of the act gathers the provisions of law required by both Conventions regarding subrogation and apportionment of claims where applicable liability limits may be exceeded. It also includes a provision (Section 302(b)) empowering a District Court of the United States to adopt a plan for prompt and equitable distribution of moneys in such cases.

The provisions of the act are explained in greater detail in the attached sectional analysis. The act would supersede that part of the Federal Water Pollution Control Act as amended relating to money damages for oil pollution and financial security, but only insofar as a given oil pollution incident is within the scope of the Conventions. No express language of supersession has been provided, however, because of pending changes to that Act.

Prompt consideration and early enactment of this legislation are respectfully urged.

¹ Throughout this letter and the attached sectional analysis, dollar figures are expressed in terms of U.S. dollars taking account of P.L. 92-268, the Par Value Modification Act. The messages from the President transmitting the Conventions to the Senate (Exec. G, 91st Cong., 2d Sess., May 20, 1970; Exec. K, 91st. Cong., 2d Sess., May 5, 1972) have expressed dollar figures in terms of 1970 U.S. dollars. The Conventions and the act themselves provide that the limit is the national currency equivalent of specified amounts of Poincare francs.

The Office of Management and Budget has advised that the enactment of this legislation is consistent with the objectives of the Administration.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

III. PROVISIONS OF THE BILL

TITLE I—INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

SEC. 101. This Section includes definitions of terms for purposes of Title I of the Act. Generally, these definitions are taken verbatim from the Civil Liability Convention itself. A “ship” is any seagoing vessel or seaborne craft actually carrying oil in bulk as cargo. “Oil” includes any persistent oil carried as cargo or in a ship’s bunkers. The definition of “person” (subsection (b)), “State of the ship’s registry” (subsection (d)), and “pollution damage” (subsection (f)), are consistent with the Convention but have been modified for clarity and to take account of circumstances prevailing in the United States and in United States law.

SEC. 102. This Section is the basic liability section of the Title. It provides that the owner of a ship at the time of an incident giving rise to pollution damage is liable for pollution damage caused as a result of the incident. The defenses of the owner are confined to:

1. Act of war, hostilities, civil war, insurrection, or act of God;
2. An act or omission done with intent to cause damage by a third party; or
3. The negligence or wrongful act of a government or other authority in the exercise of responsibility for the maintenance of lights or other navigational aids.

An owner’s liability for pollution damage may be reduced proportionally to the extent the owner proves that the damage was caused by an act or omission done with intent to cause damage by the claimant or by the claimant’s negligence. The Section provides that a ship owner may limit his liability to \$144¹ per ship’s ton or \$15,120,000,¹ whichever is lesser, by the constitution of a fund in an amount equal to the ship owner’s liability in a United States court or in a foreign court having jurisdiction under the Convention. The owner may avail himself of the limit only if the incident did not occur as a result of the owner’s fault or privity. The Section also provides that if the owner has constituted a fund, the fund shall be the only property of the owner reachable in payment for covered pollution damage, if the claimant has access to the court in which the fund is constituted, and if the fund is actually available in respect of the claim. The Section also provides that an action may be brought directly against a guarantor (insurer) of the owner’s liability for pollution damage. The Section applies to pollution damage caused on the territory, including the territorial sea of the United States or any foreign country party to the Liability Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

¹ Dollar figures throughout are 1972 U.S. dollars. The Convention expresses figures in terms of Poincare gold francs.

SEC. 103. Section 103 requires the owner of a ship registered in the United States which is capable of carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance or other financial security in the amount of the limit of the owner's liability under Section 102. Such a vessel is required to carry a certificate attesting that insurance or other financial security in that amount is maintained. No ship registered in the United States which is required to have such a certificate may engage in trade unless a certificate has been issued to it. No U.S. ship capable of carrying more than 2,000 tons of oil in bulk as cargo and no other ship, wherever registered, actually carrying more than 2,000 tons of oil in bulk as cargo, may enter or leave a port in the United States or arrive at or leave an offshore terminal in the territorial waters of the United States unless the ship has such a certificate issued by the United States or a foreign country party to the Convention. The Section also provides for a civil penalty of up to \$10,000 to be imposed upon any ship required to have a certificate and failing to do so if it enters the U.S. territorial waters or contiguous zone en route to a port or terminal installation in the United States.

SEC. 104. This Section provides that rights of compensation are extinguished unless an action is brought within three years of the date the damage occurred or not later than six years from the date of the incident which caused the damage. If the incident consists of a series of occurrences, the six-year period runs from the date of the first occurrence. The Section confers jurisdiction to entertain actions for pollution damage on the several District Courts of the United States and its territories. It provides that a judgment of a foreign court having jurisdiction in accordance with Article IX of the Liability Convention, which is final in the country of origin, shall be enforceable in the United States unless the judgment was obtained by fraud or the defendant was not given reasonable notice and a fair opportunity to present his case. Article IX of the Liability Convention provides that the courts of any contracting State have jurisdiction if an incident has occurred causing pollution damage in the territory, including the territorial sea of such a State, or if preventive measures have been taken to prevent or minimize such damage. Pursuant to the Convention, subsection (d) exempts warships or other ships owned or operated by a government and used for the time being only on government non-commercial service, since pollution damage from such ships is not covered by the Convention. It also waives the sovereign immunity of the United States with respect to actions brought against the United States for pollution damage from any ships owned by the United States and used for commercial purposes. Foreign governments are required by the Convention to make the same waiver.

TITLE II—INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

SEC. 201. This Section incorporates by reference the definitions of Title I and adds other definitions required by the Compensation Fund Convention. It confines the definition of oil to persistent hydrocarbon mineral oils for the purposes of the Title in accordance with the Compensation Fund Convention. The Liability Convention includes damage arising from the introduction of whale oil and other

oils that are not hydrocarbon mineral oils. Damage from these sources was not included in the Compensation Fund Convention because the contribution system of the Convention could not be practicably adapted to their inclusion.

SEC. 202. This Section provides that contributions to the Compensation Fund (an international entity) shall be made by any person who receives more than 150,000 tons of contributing oil (crude and fuel oil) in the relevant calendar year, carried by sea to ports or terminal installations in the territory of the United States or to ports or terminal installations of a country not party to the Convention and received in the United States, provided that contribution in respect of contributing oil carried to a non-party country is to be made only by the first receiver in the United States. The Section provides for the aggregation of receipts of contributing oil of subsidiaries, commonly controlled entities, and related groups of persons. It provides that a person required to contribute must do so upon notification by the Director of the Compensation Fund and give security for portions not called for in cash or amounts in arrears if the Director so requires pursuant to regulations of the Compensation Fund. The obligation to contribute or provide security is enforceable in the several district courts and a person failing to make payment or to provide security may be liable for a civil penalty of not more than \$5,000 for each such failure. The United States is obliged to communicate to the Director of the Compensation Fund the names and addresses of persons from time to time liable to contribute to the Compensation Fund.

SEC. 203. This Section provides for the same geographical coverage of this Title in respect of pollution damage as is provided for in Title I. It also provides that the indemnification provision for the benefit of owners of ships and guarantors (Sec. 205) applies to owners of ships registered in a State party to the Convention and to their guarantors.

SEC. 204. This Section is the basic liability Section of the Title. It provides that the Compensation Fund is liable for pollution damage arising out of an incident occurring more than 120 days after the entry into force of the Compensation Fund Convention² if (1) no liability arises under the Liability Convention; (2) because the owner is financially incapable of fully paying under the Liability Convention and his financial security is inadequate; or (3) because the damage exceeds the owner's liability under the Liability Convention or under the terms of any other applicable Convention limiting ship owner liability such as the 1957 Brussels Convention on Limitation of Shipowner's Liability.³ Reasonable costs incurred by an owner voluntarily for preventive measures are treated as pollution damage under the Section in order to induce an owner to take prompt action. The defenses of the Fund are limited to:

1. Act of war, hostilities, civil war or insurrection; or
2. That the damage was caused by a warship or other ship owned or operated by a government on non-commercial service.

If the ship causing damage cannot be identified, a claimant must prove that the damage came from one or more ships. Hence the Compensation Fund is liable for a number of incidents of pollution damage

² The purpose of the 120 day delay is for organization of the Fund after the Convention enters into force.

³ The United States is not party to this Convention.

subject to defenses under the Liability Convention (compare Title I, Section 102). The liability of the Fund may be reduced proportionally to the extent that the Fund proves that damage results from an act or omission done with the intent to cause damage by the person who suffered the damage or the negligence of that person. The Fund must be exonerated to the same extent that the owner is exonerated under Title I with respect to such a person. However, the Fund may not be to any extent exonerated with regard to pollution damage resulting from the taking of compensable preventive measures.

The aggregate amount of compensation payable by the Fund is limited so that the total sum of the amount paid by it and under the Liability Convention does not exceed \$32,400,000 or after a decision of the Assembly of the Fund to increase the limit for future incidents, any higher amount decided upon up to \$64,800,000. All pollution damage arising out of a single act of God is deemed, under this Section, to have arisen from a single incident.

SEC. 205. This Section provides that the Fund must reimburse an owner or his guarantor for that portion of his liability under the Liability Convention which exceeds \$108 per ship's ton or \$9,000,000, whichever is less, and which does not exceed \$144 per ship's ton or \$15,120,000, whichever is less, if the pollution damage did not result from the willful misconduct of the owner.⁴ The Fund may be exonerated from this obligation of reimbursement proportionally to the extent that the incident or damage was, as a result of the actual fault or privity of the owner, caused by the failure of the ship to comply with the 1954 Oil Pollution Convention, as amended in 1962, the SOLAS Convention, 1960, the Loadline Convention, 1966, or the Collision Regulations, 1960 or any amendment to those Conventions which was determined to be of an important nature and which has been in force for 12 months at the time of the incident. The Section also provides that if the Fund itself assumes directly the obligations of a guarantor of part of an owner's liability, the owner may to the extent the obligations are assumed substitute the guarantee of the Fund for the certification required by Title I.

SEC. 206. Section 206 provides that a United States or foreign court having jurisdiction over an action for pollution damage under the Liability Convention shall have exclusive jurisdiction over an action against the Fund which involves the same parties and the same set of circumstances. It provides that the Fund may intervene of right as a party in any legal proceedings against an owner or his guarantor, and provides that where the Fund has been notified that proceedings have begun, the Fund will be bound by the decision even if it has not actually intervened. Section 206 also provides a statute of limitations for actions against the Fund by claimants, owners and guarantors. The period given a claimant in which to bring action is the same period the claimant has under Title I, Section 104, for actions against an owner or guarantor. It provides that judgments given against the Fund by a court having jurisdiction as provided by the Convention shall be enforceable in the United States when final, except on the same conditions that a final judgment against an owner or a guarantor may be set aside (Title I, Section 104(c)).

⁴ The section also contains a limitation to incidents occurring more than 120 days after entry into force of the Compensation Fund Convention.

SEC. 207. This Section provides that the Fund's assets and income shall be exempt from direct taxation in the United States.

TITLE III—APPORTIONMENT OF CLAIMS AND SUBROGATION;
EXCLUSIVE REMEDY; EFFECTIVE DATE

SEC. 301. This Section defines terms within the context of this Title.

SEC. 302. Section 302 provides that, where the total amount of all claims arising out of a single incident of pollution damage exceeds an applicable limit of liability, each claimant shall be paid that part of his claim which is proportionate to the total amount of the established claims. It also provides that a district court may adopt a plan of distribution to assure that a claimant in these circumstances receives his proportionate amount and to enable a court to make disbursements pending the final determination of the total claims.

SEC. 303. Section 303 provides for rights of subrogation of an owner, his servant or agents, his guarantor or the Compensation Fund where compensation is paid by any of these persons to the claimant prior to distribution of a fund constituted under Title I. The purpose of this provision is to encourage prompt out of court settlement of claims. Likewise rights of subrogation are provided for other persons to the extent permitted under law. The United States or any foreign country may acquire a claim against the Fund by paying compensation for pollution damage under its national law.

SEC. 304. Pursuant to the Conventions, this Section provides that the remedies of Act are the exclusive remedy for claims of pollution damage or preventive measures against the owner or the Fund, and that no action for such claims may be maintained against the owner's servants or agents.

SEC. 305. This Section provides that the act shall be effective upon the later of its date of enactment or the date of entry into force of the Compensation Fund. The Compensation Fund Convention cannot enter into force before the Liability Convention. Although the Liability Convention may enter into force before the Compensation Fund Convention, it is not contemplated that the United States would become a party to the Liability Convention before the entry into force of the Compensation Fund Convention.





