

APPENDIX 2

COMPARISON OF BILLS AMENDING
THE OUTER CONTINENTAL SHELF LANDS ACT
S. 426, S. 521 AND RELATED BILLS

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Comparison
of Bills Amending the
Outer Continental Shelf Lands Act:
S. 426, S. 521 and Related Bills

ELEMENT	S. 426	S. 521	COMMENTS
<u>SHORT TITLE</u>	Outer Continental Shelf Lands Act Amendments of 1975	Energy Supply Act of 1975.	
<u>Bidding Systems</u>	<p>Sec. 202. would broaden the leasing bid options available to the Secretary. New options include: (A) cash bonus with fixed royalty, (B) variable royalty with fixed bonus, (C) cash bonus with sliding royalty, (D) cash bonus with fixed share net profits, (E) variable profit share with fixed bonus, (F) cash bonus with fixed royalty and net profit share, and (G) competitive performance work program in combination with the foregoing. Statutory restrictions on the lease area would be removed. Time limitations of 5 years to begin production would be retained.</p>	<p>Sec. 203. would expand the leasing options available to the Secretary to include only: (A) cash bonus with fixed royalty, (B) cash bonus with fixed net profit share, and (C) fixed cash bonus with net profit share. Acreage limitations on tract size would be retained but time for production from the lease could be extended up to 10 years to encourage development in deep water or under adverse conditions.</p>	<p>The OCS Act presently authorizes two bidding alternatives: (A) cash bonus with fixed royalty; or (B) variable royalty with fixed bonus. Both proposals provide added flexibility for selling lease tracts. S. 426 would permit the consideration of non-monetary factors in awarding leases.</p>

ELEMENT	S. 426	:	-	S. 521	COMMENTS
<u>Exploration or Survey Program</u>					
Ministration	Sec. 209. would amend Sec. 19 of the OCS Act to establish an exploration program within the U.S.G.C. which would include all exploratory activities inclusive of exploratory drilling to prove the presence of oil or gas prior to leasing.			Sec. 202. would amend Sec. 19 of the OCS Act to direct the Secretary to initiate a <u>survey</u> program to develop geophysical information, but <u>would not</u> include exploratory drilling.	While S. 521 does not authorize Federal exploratory programs to prove the presence and extent of oil or gas S. p40 (National Energy Production Board Act of 1975) " would provide additional authority for expanded Federal exploratory activities (Sec. 202). Administration would be by an independent Board (Sec. 101).
Conduct of Survey	Subsec. 19(b). provides that U.S.G.S. can contract, use force account or purchase exploratory data. Exploratory wells could be contracted out or the Survey could drill such wells as may be required.			Subsec. 19(e) provides that Interior can purchase exploratory data commercially or collect data directly by force account. Subsec. 19(h) requires lessees to provide information on request.	§ 740 contains provisions similar to those of s. 426, including authorization to contract for exploratory drilling to prove the field (Subsec. 202(b)).
Implementation Plans	Subsec. 19(g) requires that the Secretary and NOAA submit an implementation plan for conducting exploratory operations, including a projected schedule, and areas which will be explored within the first 5 years to Congress within 6 months. A NEPA environmental impact statement would not be needed with the plan.			Subsec. 19(d) requires a plan be submitted to Congress by the Secretary which identifies the areas to be explored within the first 5 years. All exploratory activities would be excluded from the provisions of NEPA by subsec. 19(f).	A projected schedule of exploratory activities would be required by Subsec. 202(b) of S. 740.

ELEMENT	S. 426	S. 521	COMMENTS
Exploratory Areas	Subsec. 19(h)(1) directs the Secretary to promulgate regulations for determining areas to be explored, including consultation with the industry and State and local governments	No Provision	Selection of areas to be explored would be made with consultation of State and local governments and coordination with the CZMA (Subsec. 202(b)).
Coordination with CZMA	Subsec. 19(h)(2) ensures that the proposed exploratory schedule is consistent with State programs under the Coastal Zone Management Act (CZMA).	No Provision	While S. 426 requires "consistency" of Federal exploratory programs with State coastal zone programs under the intent of Sec. 307 of the CZMA, S. 740 speaks only in terms of "coordination" with coastal State programs (Sec. 202(b)).
Exploratory Drilling Notice	Subsec. 19(h)(3) requires that detailed information about proposed exploratory drilling be published in the Fed. Reg. 120 days prior to drilling.	No Provision	
Environmental Impact Statement	Selection of areas for drilling would require an Environmental Impact Statement under the National Environmental Policy Act (Subsec. 19(h)(4)).	No Provision	S. 426 dispenses with the need for an EIS for the implementation plan under Subsec. 19(g); however, the provisions of Subsec. 19(h)(4) reflect the need for assessing the potential impact of exploratory drilling and the need for environmental assessment early in the exploratory-leasing-development sequence.

ELEMENT	S. 426	S. 521	C O M M E N T S
Information Disclosure	Subsec. 19(d) requires that all exploratory data and information conducted under the Federal exploratory program, with exception of certain proprietary data, be made available to the public, without regard to exemptions provided by the Freedom of Information Act. Subsec. 19(f) provides that Interior and NOAA shall keep an updated set of maps based on the results of the exploratory program.	Subsec. 19(c) directs Interior and NOAA to prepare and publish <i>map</i> ; and charts of OCS resources at least 6 months prior to a lease sale.	A Federal exploratory program would change the leasing procedure and ob- viate the need, to some extent, for proprietary exploration and confidentiality. Equality of access to public resource data should act to equalize competition among small independents and the consortia of major oil companies.
Private Exploration	Subsec. 19(c) permits Private geological and geophysical exploration upon issuance of an exploration permit (See Sec.206 amending Sec. 11 of the OCS Act). Exploratory drilling would not be permitted prior to lease.	Sec. 207, which amends Sec. 11 of the OCS Act, provides private geological and geophysical exploration upon issuance of a permit.	Neither S. 426 nor S. 521 would discourage private exploration. Requirements for an exploratory permit merely incorporate the administrative procedures now in effect in regard to <i>certain</i> exploratory activities. Prohibition of exploratory drilling by Subsec. 19(c) is not inconsistent with the present OCS Act which also does not authorize exploratory drilling prior to leasing.

ELEMENT	S. 426	S. 521	COMMENTS
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Leasing Program and Schedule

Subsec. 18(b) requires the Secretary to maintain a leasing program which identifies the size, timing and location of leasing over a 10-year planning record.

Subsec. 18(b) requires the Secretary to prepare a 10-year-leasing program. Estimates of the probable oil and gas resources and timing rate of development, as well as identification of environmental hazards are to be included in EIS (Subsec. 18(&)). Nomination of sites is to include the public and be coordinated with CZMA (Subsec. 18(e)), and requires that the leasing program be published in the Fed. Reg. and submitted to Congress within 2 years (Subsec. 18(f)).

S. 521 utilizes the Leasing Program authorized by Subsec. 18(b) as the major device for disclosing the projected leasing schedule. S. 426, on the other hand, creates the Leasing program as merely a long-range planning document to give sufficient prior notice to State and local governments and to Federal agencies of the area which may ultimately be chosen for sale (Subsec. 18(b)).

Subsec. 18(h) requires the Secretary to review and reapprove the Leasing program annually.

Leasing and Development Plan

Approval

Subsec. 20(a) requires the Secretary to prepare a Leasing and Development Plan for areas in which oil and gas are discovered as a result of Federal exploration and drilling. The

Sec. 206 would amend Sec. 5 of the OCS Act to require that development of the Lease be in accordance with a development plan submitted by the lessee and approved by the Secretary. However,

The Leasing and Development Plan required by subsec. 20(a) of S. 426 is the major planning and approval document preceding lease sales. The potential of congressional review would make the Plan instrument for resolving conflicts between the States and Interior prior to initiating lease sales.

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ELEMENT	s. 426	: —	s. 521	COMMENTS
	plan must be transmitted to Congress 90 days prior to placing leases up for sale. Congress may disapprove within 90 days by a resolution passed by either house stating its reason for disapproval.			no provision is made for a leasing and development plan analogous to that required by Subsec. 20(a) of S. 426.
Planning Information	Subsec. 20(b) requires that a leasing and Development plan include information necessary for States to plan and provide for the impact of offshore oil end gas development.			No Provision
Certification of Consistency	Subsec. 20(b)(12) requires that the Secretary certify that the Leasing and Development Plan is consistent with the State's coastal zone management programs in accordance with section 307 of the CZMA.			No Provision
Cements by States	Subsec. 20(c)(1) requires that the Leasing and Development Plan be submitted to the Governors of the adjacent States for comment 60 days prior to transmittal to Congress required by Subsec. 20(a).			No Provision

ELEMENT	S. 426	S. 521	COMMENTS
Petition for Postponement	<p>A Governor may petition the Secretary for postponement of the lease sale for up to 3 years for cause. The Secretary may grant or condition a postponement, or deny it on grounds of national interest (Subsec. 20(c)(2)). Governor's comments and related correspondence must be included when Plan is transmitted to Congress (Subsec. 20(c)(3)).</p>	<p>200 would amend Sec. Sec. The OCS Act to provide for the request by a Governor of a coastal State for a postponement of up to 3 years for cause similar to the provisions of Subsec. 20(c)(2) of S. 426; however, in the event of an adverse decision, an appeal would be made to a "National Coastal Resources Board" composed of Federal officials appointed by the President and chaired by the Vice President.</p>	
Environmental Impact Statement	<p>Subsec. 20(d) requires that the the EIS must accompany the Leasing and Development Plan when transmitted to Congress for approval under Subsec. 20(a).</p>	<p>No Provision</p>	

 COMMENT

Environmental Impact Assessment, Baseline Studies, and Monitoring Lead Agency

Subsec. 21(a) designates NOAA as the "lead agency" for the purpose of complying with NEPA in all matters regarding the OCS Act.

Interior would remain "lead agency" under the traditional definition of the CEQ guidelines for NEP.

NEPA places the responsibility for compliance with the EIS requirement on the Federal agency which initiates the Federal action. Subsec. 21(a) of S. 426, for the purpose of offshore oil and gas development, would amend this provision of NEPA, NOAA, as the agency with expertise in both marine and coastal resources, would assume the responsibility for preparing the EIS.

Baseline Studies

Subsec. 21(b) requires NOAA to conduct environmental baseline studies on the marine and coastal environments in consultation with the Secretary.

Subsec. 30(a) requires that the Secretary in consultation with NOAA must make a study of the area prior to leasing to establish environmental baseline data.

Under the present operation of NEPA, BLM as the lead agency enters agreements with NOAA to perform certain baseline studies of the marine environment. BLM has not retained NOAA to perform any onshore impact assessments for input into the EIS. NOAA, since it is not lead agency, cannot on its own initiative perform such studies without a request from BLM. Subsec. 21(b) would provide statutory authority for NOAA to undertake the necessary studies.

Scope of Impact Statement

Subsec. 21(c) adopts the list of parameters to be assessed by an EIS as promulgated by CEQ but embellishes them to reflect secondary growth phenomena induced by offshore development and to identify inconsistencies with State coastal zone management.

Subsec. 18(b) provides that certain resource statistics and anticipated extent and rate of development be included in an EIS for the Leasing Program authorized by Sec. 18.

NEPA implicitly requires, and the CEQ Guidelines reflect, that socio-economic factors be considered in the EIS. Subsec. 21(c) of S. 426 explicitly requires that factors which may effect onshore growth be considered. Provisions in Subsec. 18(b) of S. 521 require the inclusion of certain resource-related data but is not as comprehensive as S. 426.

ELEMENT	S. 426	S. 521	COMMENTS
i.monitoring Studies	Subsec. 21(d) requires NOAA to conduct monitoring studies after leasing and development to detect changes in the environment as a result of oil and gas development.	Sub: ec. 30(1.) requires con- timed post-leasing monitoring similar to Subsec. 21(d) of S. -26.	Post-leasing environmental monitoring is minimal under the present administrative procedure. Both S. 521 and S. 426 provide for contiguous monitoring after leasing and development in order to detect adverse environmental effect caused by OCS operations.
<u>Adjacent Coastal States</u>	Subsec. 21.(f) provides pro- cedures for the Administrator of NOAA to designate "adjacent coastal States" based on the po- tential impact which may be re- ceived as a result of the pro- posed action for the purpose of comments and petitions for post- ponement in Sec. 20.	**Adjacent State" is not defined explicitly.	S. 521 does not supply a definition for "adjacent coastal State". S. 426 provides a definition and process for designating "adjacent coastal States" on a basis other than mere geographical proximities and parallels, to a certain extent, the definition used In the Deepwater Ports Act.
<u>Inspection and En- forcement of Safety Regulation</u>			
Promulgation of Regulations	Subsec. 22(b) requires the Coast Guard to develop and pro- mulate safety regulations for operations in the OCS based on the best available technology.	Subsec. 20(b) directs the Secretary to promulgate safety regulations within one year based on the best available technology.	S. 426 gives the authority and re- sponsibility for promulgating and enforcing safety regulations to the coast Guard. S.521 retains a split responsibility for safety reg- ulation and enforcement.

ELEMENT	S. 521	COMMENTS
<u>Enforcement of Regulations</u>	Subsec. 23(a) designates the Coast Guard as responsible agency for enforcing the regulations promulgated under Subsec. 22(b). Annual inspections and periodic unannounced inspections are required.	Subsec. 22(a) provides for a joint enforcement effort by Interior and the Coast Guard with inspection requirements similar to Subsec. 23(a) of S. 426.
<u>Liability for Oilspills</u>	Subsec. 26(a) requires that the person in charge of oil or gas operations must report spills to the Coast Guard upon having knowledge of the spill under penalty of \$10 thousand for failure to do so. Criminal action against the reporting individual may not be based on the information given. Subsec. 23(a) also requires the Coast Guard to investigate all "major" oilspills.	Subsec. 23(a) requires similar disclosure as Subsec. 26(a) of S. 426 but levies no penalty for failure to report and requires only reporting to the "appropriate agency" implying either the Coast Guard or Interior. Similar to S. 426, the Coast Guard must investigate all "major" oilspills and issue a public report within 30 days.
<u>Reporting</u>		

EVENT	COMMENTS
Removal	<p>Subsec. 26(b) directs the Coast Guard to initiate removal procedures unless it may be done adequately by the lessee. Costs incurred by the Coast Guard may be recovered from the "Offshore Oil Pollution Settlement Fund" established under Subsec. 26(c).</p> <p>M) Provis: on</p> <p>In the event of an oil spill, quick mobilization and cleanup is necessary. S. 426 provides for the Coast Guard to initiate cleanup procedures similar to the provisions in the Deepwater Ports Act.</p>
Strict Liability	<p>Subsec. 26(c) establishes strict liability without regard to fault for any damage which may result to natural resources relied on for economic purpose or subsistence by a claimant from oil spilled by a lessee or permittee. The defenses of war, negligence of the Federal Government or of the claimant may be pled.</p> <p>Subsec. 23(b) similar to S. 426, established strict liability for damage to natural resources relied on for economic purpose or subsistence by a claimant. The same defenses are available to a lessee.</p> <p>Both S. 426 and S. 521 escript the theory of strict liability for oil spills. No proof of negligence, causation or harm need be shown. Valid defenses are restricted to force major and negligence on the part of government or claimant.</p>
Limits of Liability	<p>Subsec. 26(c) limits recovery for a single incident to no more than \$100 million, with the lessee assuming liability for the first \$7 million, balance to be derived from the Settlement Fund. Evidence of financial ability is required (Subsec. 25(d)).</p> <p>Subsec. 23(b) provides identical limits to those of Subsec. 26(c) of S. 426.</p>

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ELEMENT	S. 426	s. 521	COMMENTS
Fund	Subsec. 26(c) establishes the "Offshore Oil Pollution Settlement Fund". Fund will be maintained by a 2 1/2 cent per barrel surcharge. Collections will cease when the Fund reaches \$100 million and recommence when it depreciates to \$85 million. The Fund may borrow from commercial lenders as required.	Subsecs. 23(b) and 23(d) contain identical provisions for the Fund as Subsecs. 26(c) and 26(d) of S. 426.	

Remedies and

prosecution

Subsec. 24(a) directs the Attorney General or any U.S. Attorney of the jurisdiction to institute civil action against an alleged violator of any safety regulation at the request of the Coast Guard.

Subsec. 29(a) permits the Attorney General to exercise discretion in instituting cases to enforce provisions of the law at the request of the Secretary.

In some instances there has been a reluctance on the part of the Department of Justice to *initiate enforcement* actions upon the application of other Federal agencies. The permissive language of Subsec. 29(a) of S. 521 would continue the direction of the Attorney General in undertaking enforcement litigation. Subsec. 24(a) of S. **426** would require the Attorney General to prosecute the case at the determination of the Coast Guard. U.S. **Attorneys would also** be given authority to prosecute at the jurisdictional level.

ELEMENTS	s. 426	S. 521	COMMENTS
Civil Penalties	Subsec. 24(b) establishes a fine for violation of regulations or orders at \$50 thousand per day for each day of continued violation. Subsec. 24(d) establishes a \$100 thousand and/or one year imprisonment for willful violation of a rule regulation or order of for falsifying or tampering with monitoring equipment or information.	Subsec. 29(b) establishes a penalty of \$5 thousand for a violation as provided in Subsec. 24(b) of S. 426. Subsec. 29(c) provides the same penalties as set out in Subsec. 24(c) of S. 426.	
Citizen Suits	Subsec. 25(a) permits any person adversely affected to commence a civil action on the basis of a violation of a regulation, permit license or lease. Action may be brought against a person, government or against the Secretary for performance of a non-discretionary duty. Subsec. 25(b) requires that notice be given to the Secretary and alleged offender to permit administrative remedies. Also, the Secretary may intervene in any action as a matter of right (Subsec. 25(c)). Costs may be awarded to any party at the discretion of the court (Subsec. 25(d)).	Subsec. 27(a) et seq. permits the initiation of citizen suits similar to the provisions of Subsec. 25(a) et seq. of S. 426.	The citizen suits provisions of S. 426 and S. 521 incorporate the concept of citizen participation in the administrative procedure of Federal agencies. Limited authority to bring suits equivalent to statutory mandamus for non-discretionary actions of the administrator and against violators in the absence of adequate enforcement is provided in a manner similar to the Federal Water Pollution Control Act Amendments, the Noise Control Act of 1972 and the Deepwater Ports Act.

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ELEMENT	S. 426	s. 521	COMMENTS
<u>Research and Development</u>	Subsec. 27(a) directs the Coast Guard to conduct research and development to improve <u>safety</u> Of offshore operations where sufficient <u>drilling</u> technology, safety research is <u>not</u> being undertaken by other government or private agencies.	Subsec. 21(a) directs the Secretary to conduct research and development to improve <u>drilling</u> technology, safety and monitoring of oil and gas operation on the OCS in the absence of on-going research.	S. 426 restricts the authorization to undertake research and development to <u>those</u> activities that would enhance safety of OCS operations. S. 521 permits <u>a</u> broader definition of research to include drilling devices and techniques.
<u>Moratorium</u>	Subsection 29(a) would terminate further leasing in all areas where there has been no prior leasing (Frontier Areas) or where geological or environmental conditions make drilling hazardous. The moratorium would continue until the exploratory program was completed and Congress concurred by its silence with a Leasing and Development Plan as provided by Subsec. 29(b)).	No. Provision	

ELEMENT	S. 426	S. 521	COMMENTS
<u>Coastal</u>	Impact Provisions	<p>Subsec. 26(a) establishes "Coastal State Fund" under the custody of the Secretary to provide grants to the coastal States impacted by OCS oil or gas development.</p> <p>Subsec. 26(c) provides for grants to be non-matching, full-compensating grants to offset the social, economic or environmental impacts resulting from OCS operations. The Fund would be created by earmarking 10 percent of Federal OCS revenues or 40 cents per barrel whichever is greater (Subsec. ; 6(d)). An upper limit of ; 200 million per year is established and \$100 million is authorized as a base for the Fund (Subsec. 26(e)).</p>	<p>S. 586 (Coastal Zone Environment Act of 1975) provides for a Coastal Impact Fund to be administered by the Department of Commerce to provide 100 percent grants to States which are likely to be impacted by any energy facility if the State is participation in the Coastal Zone Management Act planning grant program. Grants under Sec. 308 of S. 586 could be used for planning, managing, or c o n t r o l l i n g e c o n o m i c , mental or social impacts, or for the construction of public facilities and services made necessary by the energy development activity. The Fund would be created by appropriated money rather than earmarked funds from OCS revenue.</p>
<u>Strategic Reserves</u>	<p>Sec. 304 requires a study to explore the feasibility of exchanging onshore naval petroleum reserves for offshore strategic reserves.</p>	<p>Subsec. '18(k) requires that area of the OCS be reserved as a "National Strategic Energy Reserve", and the Secretary is directed to study Means for developing and maintaining them : n the national interest.</p>	