RSC Republican Study Committee

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Legislative Bulletin…………………………………….…….………June 26, 2008

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H.R. 6251—Responsible Federal Oil and Gas Lease Act

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Order of Business: The bill is scheduled to be considered on Thursday, June 26th, under a motion to suspend the rules and pass the bill (therefore allowing no amendments to the bill, requiring a two-thirds vote for passage, and waiving all points of order). Normally, suspensions are not in order on Thursdays, therefore a motion to suspend the rules and pass H.R. 6251 will only be in order if the House passes H.Res. 1304, a special rule providing for the consideration of the energy transit bill (H.R. 6052) and making in order (at any time on the legislative day of Thursday, June 26, 2008) motions to suspend the rules relating to separate measures concerning the:

--Commodity Exchange Act and energy markets (an anti-oil-investors bill); and
--Issuance of oil and gas leases on federal lands or waters (a "use-it-or-lose-it" bill).

Summary: H.R. 6251 would prohibit the Secretary of the Interior from issuing new leases for the exploration for, or production of, oil or natural gas, unless the applicant:

- Certifies that he is "diligently developing" the federal lands in his existing leases to produce oil or natural gas—or is currently producing oil or natural gas from such lands; or
- Relinquishes his current leases under which oil and gas is not being "diligently developed."

NOTE: "Diligently developing" and "diligently developed" are not affirmatively defined in the legislation. Instead, Congress would leave it to the Secretary of the Interior to issue a definition within 180 days of the enactment of this legislation.

Failure to comply with this legislation—or any related regulation—would trigger civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719).

Democrat Justifications for This Bill: This legislation is the "use-it-or-lose-it" part of the Democrat energy agenda, in which Democrats have countered Republican calls for opening the Arctic National Wildlife Refuge (ANWR), additional areas of the Outer Continental Shelf (OCS), and additional areas of the intermountain West to oil and gas exploration and

development with an insistence that energy companies are under-producing or not producing on current leases on federal lands. Some Democrats have asserted that upwards of 68 million acres of federal lands currently leased for oil and gas exploration and development are not actively being used. Further, they assert, 4.8 million barrels of oil per day and 44.7 billion cubic feet of natural gas per day may be "extrapolated" from the oil companies' "unused" federally-leased lands. These Democrats have asserted that the federal government should not issue any new leases in ANWR, the OCS, or the intermountain West until these existing leases are fully utilized.

Counter-assertions:

Already the Law. Under current law (30 U.S.C. 226(e) and 43 U.S.C. 1337(b)), federal energy lease holders already must produce oil or natural gas within five to ten years after drilling on the federal land begins, depending on certain circumstances. The Secretary of the Interior has the power to cancel any such lease if the energy company fails to comply (30 U.S.C. 188(a) and (b),. As the American Petroleum Institute (API) points out, all the capital spent by an energy company to acquire and keep a lease, which can be millions of dollars for a single lease, is lost if the lease is canceled and/or returned to the federal government.

No Incentive to Let Leases Go Idle. Energy companies have no financial incentive to let leases sit idle. On the contrary, as the energy advocates at Winnigreen point out, the federal government requires companies to pay up-front bonus fees and annual rents on the leased areas, *regardless of whether they produce oil and gas*. If the annual payment is not made, the leases are forfeited, so it is very much in the companies' interest to work to produce oil or gas from them. Because of the uncertainty of exactly where and how much oil or gas is in an area, companies often secure a large amount of leases in an area in hopes that some are productive. Until a well comes on line, those leases may seem to be in the unproductive stage, but they often are not—and are certainly not sitting idle out of neglect or some design to pay for, but never use, federal leases.

No Activity Today Does Not Mean No Activity Ever. According to the American Association of Petroleum Geologists (AAPG), "Finding oil and natural gas traps, places where oil and natural gas migrate and concentrate, buried under thousands of feet of rock is like finding the proverbial needle in a haystack…. One cannot assume oil and natural gas are evenly distributed across a given lease or region. Rather, exploration is about unraveling the geologic history of the rock underneath that grid block, trying to understand where oil or natural gas may have formed and where it migrated…. Successful exploration begins with an idea—a hypothesis of where oil may be found."

Geologists use this sophisticated modeling to then suggest places to drill, places to modify their drilling, and places to abandon drilling (or to never drill in the first place). While some portion of these assessments is based on geological considerations, some other portion is also made on financial considerations. That is, just because oil is found somewhere doesn't mean it is automatically financially sensible to bring it up.

The AAPG and API note that the process of leasing, evaluating, drilling, and developing an oil or natural gas field typically takes five to ten years. While some fields become active sooner, others are hampered by permitting or regulatory delays, as well as by administrative delays (like labor problems or data shortages).

Therefore, the AAPG asserts, "Policies that increase exploration costs, decrease the available time to properly evaluate leases, and restrict access to federal lands and the Outer Continental Shelf do not provide the American people with short-term relief from high prices and undermine the goal of increasing stable long-term supplies."

Magical Data. The Democrat assertion that 4.8 million barrels of oil per day and 44.7 billion cubic feet of natural gas per day may be "extrapolated" from the oil companies' "unused" federally-leased lands has not been substantiated. As the AAPG noted, finding exactly where petroleum is, how much of it there is, and how much is recoverable in a financially sensible way is a matter of complicated scientific analysis and frequent re-evaluation. Thus, the 4.8 million barrels and 44.7 billion cubic feet figures are highly suspect.

Technological Efficiencies Can Make It Unnecessary to Use All Leases. As API points out, on the OCS, for example, companies often bid on several contiguous leases in a geographical area it believes will have underlying oil and natural gas resources. A strategically placed exploratory well on a single lease may give the company enough data to determine the petroleum potential of many leases. Thus, it may appear that the other leases are dormant, but that is not often the case.

RSC Bonus Fact: According to the American Petroleum Institute, about 121 companies own rights to OCS leases. Companies currently lease approximately 43 million OCS acres that account for about 15% of U.S. natural gas production and about 27% of its oil production.

Onshore, hundreds of companies own federal leases. Companies currently lease over 44 million federal onshore acres that account for more than 5% of U.S. domestic oil production and more than 11% of U.S. domestic natural gas production (as of FY2006).

Committee Action: On June 12, 2008, H.R. 6251 was introduced and referred to the Natural Resources Committee, which subsequently amended the bill behind the scenes (not in public forum) before House floor action today.

Possible Conservative Concerns: In addition to the concerns raised in the "Counter-assertions" section above, some conservatives may be concerned that this legislation is aimed less at well-intentioned policymaking and more at political grandstanding in reaction to Republican rhetorical victories on the need to increase American energy exploration and development.

As the Republican staff of the Natural Resources Committee points out, some of the Democrats saying "use it or lose it" are the same ones who voted for the "Section 2509 Amendment" in 1992 that gave oil companies up to ten years, rather than five years, to explore for onshore oil and to complete required studies and permits. (Roll Call #474, October 5, 1992, for H.R. 776, which became Public Law 102-486) Those Democrats who understand that oil leasing is not a quick and consistent activity and who thus voted to give oil companies more time to find and

produce oil on federal leases include Rep. Nancy Pelosi (D-CA), Rep. Steny Hoyer (D-MD), Rep. Nick Rahall (D-WV), Rep. Norman Dicks (D-WA), Rep. John Murtha (D-PA), Rep. Allan Mollohan (D-WV), Rep. Jim Moran (D-VA), Rep. George Miller (D-CA), and Rep. Ed Markey (D-MA).

Some conservatives may also be concerned that, at a time when gas prices are soaring and the need to increase the supply of American energy has never been greater, it would be harmful to do anything to restrict the development of American energy, which this legislation would surely do. This legislation would send a signal to the energy markets that petroleum had better come up quick or not at all, a move that could trigger higher energy prices and discourage investment in energy exploration.

Lastly, some conservatives may be concerned that this legislation is being used to assuage the concerns of Democrat-allied environmentalist groups that have been disturbed by calls for more exploration in America.

Administration Position: Although a Statement of Administration Policy (SAP) for H.R. 6251 was not available at press time, reports indicate that the Administration will oppose this legislation.

Cost to Taxpayers: A CBO cost estimate was not available at press time. Reports indicate that the bill would reduce revenues (from fewer leases). Such a revenue-reduction without any offsets would normally be a PAYGO violation, but since this bill is being considered under suspension of the rules, no PAYGO point of order may be lodged.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Although a CBO analysis of the mandates in the bill is unavailable, presumably the provisions of the legislation would not be considered mandates under the Unfunded Mandates Reform Act, since companies are technically not *required* to lease lands from the federal government for energy exploration.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

Outside Organizations: The American Petroleum Institute is strongly opposed to the bill.

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