THE REPUBLICAN STUDY COMMITTEE
Rep. Jim Jordan, Chairman
Paul Teller, Executive Director
RSC
202.226.9717
rsc.jordan.house.gov

Legislative Bulletin .... February 15, 2012

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H.R. 3408 - Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act (Lamborn, R-CO)

Order of Business: H.R. 3408 is expected to come to the floor on Wednesday, February 15, 2012, under a structured rule, H.Res. 547.

Summary of the Rule: The rule, H.Res. 547, provides one hour of general debate with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources and 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. After general debate, the bill shall be considered for amendment under the five-minute rule. The rule makes in order those amendments printed in Part A of the Rules Committee report, which will be summarized in a separate bulletin. The rule also provides for one motion to recommit, with or without instructions.

The rule also provides for consideration of H.R. 3813. The rule provides one hour of general debate with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform. The rule also makes in order those amendments printed in Part B of the Rules Committee report, which will be summarized in a separate bulletin. The rule also provides for one motion to recommit, with or without instructions.

The rule also provides for consideration of H.R. 7. The rule provides one hour of general debate with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. Subject to final passage of H.R. 3408, H.R. 3813, and H.R. 7, the Clerk is authorized to merge the three texts into one bill for purposes of sending to the Senate.

Summary: It is RSC staffs' understanding that H.R. 3408 includes titles XIV and XVII of Rules Committee Print 112-12 of H.R. 7.

Keystone XL Pipeline - The legislation directs the Federal Energy Regulatory Commission (FERC) to, within 30 days, issue a permit for the construction for the Keystone XL Pipeline Project. If FERC does not issue this permit within 30 days then the permit is deemed to have been issued.

Oil Shale Leasing – The legislation directs the Secretary of the Interior to conduct at least 15 commercial lease sales for oil shale development. According to Section 17003, each sale must consist of 25,000 acres. The legislation also codifies the 2008 regulations by the Bureau of Land Management, and the November 17, 2008 Bureau of Land Management Resource Management Plan Amendments. These both pertain to oil shale leasing on federal lands.

Offshore Oil and Gas Leasing – The legislation directs the Secretary to conduct several oil and gas lease sales off the Outer Continental Shelf in the Gulf of Mexico, offshore Virginia, and offshore southern California. However, oil and gas exploration off the coast of California must be done with **existing** offshore infrastructure or from onshore-based drilling. The legislation also opens for development approximately 1,350 square miles in the Eastern Gulf of Mexico. The Eastern Gulf is currently closed to oil and gas development. Further, the legislation requires the Secretary to conduct the proposed lease sale in the North Aleutian Basin, in the Bering Sea off the Alaskan coast. The legislation also establishes guidelines for revenue sharing for coastal states. Of revenues received by the United States, 37.5% shall be allocated to coastal states that are affected by the lease sale.

Alaska Coastal Plain Oil and Gas Leasing – The legislation repeals the ban on, and directs the Secretary to implement, an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). The Secretary is also directed to conduct oil and gas lease sales for no less than 50,000 acres in ANWR, within 22 months of enactment. The Secretary is also required to lease oil and gas lease sales of an additional 50,000 acres (at a minimum), at 6, 12, and 18-month intervals. The Secretary is allowed to designate up to 45,000 acres as "special areas" that are off limits for oil and gas exploration. This legislation also requires that 50% of the amount of bonus, rent, and royalty revenues from oil and gas leases in the Coastal Plain be deposited in the Treasury.

Title XIV - Keystone XL Pipeline:

Title XIV closely resembles H.R. 3548 by Rep. Terry (R-NE).

Keystone Permit. The legislation directs the Federal Energy Regulatory Commission (FERC) to, within 30 days, issue a permit for the construction for the Keystone XL Pipeline Project. If FERC does not issue this permit within 30 days then the permit is deemed to have been issued.

The permit holder is allowed to re-route the pipeline, so long as this is approved by FERC. Within 30 days of enactment, FERC shall enter into a memorandum of understanding with the state of Nebraska for a review under the National Environmental

Policy Act regarding the rerouting of the pipeline. FERC shall complete this review within 30 days of receiving notification from the Governor of Nebraska. IF FERC fails to act within 30 days then the proposed rerouting of the pipeline shall be deemed to be approved.

Title XVII – Natural Resources:

Subtitle A – Oil Shale Leasing:
This subtitle closely resembles H.R. 3408 by Rep. Lamborn (R-CO).

Section 17002 - Effectiveness of Oil Share Regulations, Amendments to Resource Management Plans, and Record of Decision. The legislation codifies the 2008 regulations by the Bureau of Land Management, that were published on November 18, 2008, and the Bureau of Land Management Resource Management Plan Amendments, that was approved on November 17, 2008. These both pertain to oil shale leasing on federal lands. H.R. 7 clarifies that both the regulations and plan satisfy all requirements under existing law.

Section 17003 - Oil Shale Leasing. The legislation requires the Secretary of the Interior to hold a lease sale within 180 days of enactment. The Secretary must offer 10 parcels for lease, research, development, and demonstration of oil shale. By January 1, 2016, the Secretary of the Interior is required to have offered at least 5 separate commercial lease sales in areas considered to have the most potential for oil shale development. Each lease must be at least 25,000 acres, and in multiple lease blocs.

Section 17004 – Policies Regarding Buying, Building, and Working for America. The Secretary of the Interior is required, when possible and practicable, to encourage the use of United States workers and equipment manufactured in the United States in all construction related to mineral resource development. Many free-market conservatives object to such "Buy American" provisions. These protectionist requirements inherently limit choice and ultimately lead to an increase in the cost of goods and services consumed.

Subtitle B – Offshore Oil and Gas Leasing:
This subtitle closely resembles H.R. 3410 by Rep. Stivers (R-OH).

Section 17201 - Outer Continental Shelf Leasing Program. The Secretary is required to make for lease at least ½ of the available unleased acreage within each outer Continental Shelf (OCS) planning area that is considered to have the largest undiscovered and recoverable oil and gas reserves. This will be based upon the most recent national geologic assessment of the OCS. The Secretary shall also make available any state subdivision of an OCS area that the Governor (of the state representing that area) requests be made available.

The legislation further amends the Outer Continental Shelf Lands Act to require the Secretary to make available for leasing areas that:

- “Are estimated to contain more than 2,500,000,000 barrels of oil; or
- “Are estimated to contain more than 7,500,000,000,000 cubic feet of natural gas.”

Section 17202 – Domestic Oil and Natural Gas Production Goal. The legislation further amends the Outer Continental Shelf Lands Act to require the Secretary to, when developing a 5-year oil and gas leasing program, determine a strategic production goal. This goal shall be to, by 2027, increase domestic energy production to at least 3,000,000 barrels of oil per day, and at least 10,000,000,000 cubic feet of natural gas per day.

Section 17301 – Requirement to Conduct Proposed Oil and Gas Lease Sale 216 in the Central Gulf of Mexico. Within four months of enactment, the Secretary of the Interior is required to conduct offshore oil and gas Lease Sale 216. This lease sale is located in the central gulf and is currently scheduled for sale on June 20, 2012.

Section 17302 - Requirement to Conduct Proposed Oil and Gas Lease Sale 220 on the Outer Continental Shelf Offshore Virginia. Within one year of enactment, the Secretary shall conduct Lease Sale 220. This lease is located off the state of Virginia. A map of the proposed sale can be viewed here. On May 27, 2010, President Obama announced his decision to cancel this sale.

If the Secretary of Defense proposes to defer this lease sale due to defense-related activities, then the Secretary of the Interior will make two other lease blocks in the Virginia lease sale planning area available.

Section 17303 - Requirement to Conduct Proposed Oil and Gas Lease Sale 222 in the Central Gulf of Mexico. By no later than September 1, 2012, the Secretary shall conduct offshore oil and gas Lease Sale 222. This lease sale is located in the central gulf and is currently scheduled for sale on June 20, 2012.

Section 17304 – Lease Sale Offshore California with No New Offshore Impact. By no later than July 1, 2014, the Secretary shall offer for sale leases of tracts in the Southern California Planning Area in the Santa Maria and Santa Barbara/Ventura Basins. The hydrocarbons that would be available because of this section are only to be accessed through **existing** offshore infrastructure or from onshore-based drilling.

Section 17035 - Requirement to Conduct Proposed Oil and Gas Lease Sale 214 in the North Aleutian Basin Offshore Alaska. Within one year of enactment, the Secretary shall conduct Lease Sale 214. This sale is located in the North Aleutian Basin Outer Continental Shelf Planning Area.

Section 17306 – Additional Leases. This section allows the Secretary to conduct additional lease sales regardless of the inclusion in a leasing program.

Section 17401 - Leasing in the Eastern Gulf of Mexico. The section repeals the moratorium on oil and gas leases in the eastern gulf (east of the military mission line). This moratorium was established by section 104, division C, of Public Law 109-432.

Section 17402 - Reforming Oil and Gas Leasing in the Eastern Gulf of Mexico. This section clarifies the boundary between the Central Gulf of Mexico OCS Planning Area and the Eastern Gulf of Mexico OCS Planning Area shall be at 86 degrees, 41 minutes west longitude. It also reestablishes the moratorium on drilling in the Eastern Gulf of Mexico through June 30, 2025. However, by repealing the moratorium (via Section 17401) and establishing the administrative boundary line between the Central Gulf and Eastern Gulf (at 86 degrees, 41 minutes west longitude) this section adds an estimated 4.4 million acres into the Central Gulf of Mexico OCS Planning Area for development.

This section requires the Secretary to conduct one lease sale in the Eastern Gulf in 2013, 2014, and in 2015. These sales will consist of only 50 contiguous OCS lease blocks that are considered to have the greatest number of hydrocarbons that can be extracted. The Secretary is allowed to limit permanent surface occupancy if that occupancy is incompatible with military operations. The Secretary is also allowed to limit drilling schedules and surface occupancy to accommodate defense activities. The Secretary is also allowed to restrict permanent surface infrastructure on any OCS lease block that is within 10 nautical miles to the coastline, unless that infrastructure is approved by the state.

In cases where the Secretary of Defense proposes deferring a lease sale because of adverse effects to military activities, the Secretary of Interior shall make available in the same lease sale two other lease blocks in the same OCS planning area.

Section 17403 – Areas Added to Central Gulf of Mexico Planning Area. This section requires the Secretary to conduct an oil and gas lease sale for the new area of the Central Gulf of Mexico OCS Planning Area that was added because of section 17402 (above).

Section 17404 – Application of Outer Continental Shelf Lands Act with Respect Territories of the United States. This section applies the Outer Continental Shelf Lands Act to the U.S. territories of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Marina Islands.

Section 17501 – Disposition of Outer Continental Shelf Revenues to Coastal States. This section establishes guidelines for revenue sharing for revenue generated from new lease sales caused by this legislation.

Of new revenues received by the United States, 37.5% shall be allocated to coastal states that are affected by the lease sale. These revenues shall be paid to states that are within 200 miles of the leased tract. In cases where there are multiple states within this range, the revenues will be paid in amounts that "are inversely proportional to the respective distances between the point of the coastline of each such state that is closest to the geographic center of the lease tract." The state closest to the geographic center of the leased tract shall receive at least 25% of the total revenue that is available to the states. Other coastal states may receive not less than 10%, and not more than 15% of the total revenue that is available to the states. In the case of a coastal state that is the only state within 200 miles of a leased tract, they shall receive 100% of the total revenue that is available to the states.

The states may use these funds as they see fit, but may not use these funds as matching funds for any federal program.

Section 17601 – Policies Regarding Buying, Building, and Working for America. The Secretary of the Interior is required, when possible and practicable, to encourage the use of United States workers and equipment manufactured in the United States in all construction related to mineral resource development. Many free-market conservatives object to such "Buy American" provisions. These protectionist requirements inherently limit choice and ultimately lead to an increase in the cost of goods and services consumed.

Subtitle C – Alaska Coastal Plain Oil and Gas Leasing:
This subtitle closely resembles H.R. 3407 by Rep. Hastings (R-WA).

Section 17703 – Leasing Program for Lands within the Coastal Plain. The legislation requires the Secretary of establish and implement an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). The Secretary is required to ensure that this leasing program will have no significant adverse effect on fish and wildlife, their habitat, subsistence resources and the environment.

This section repeals the leasing ban on the production of oil and gas from ANWR. It also clarifies that the Final Legislative Environmental Impact Statement (from April 1987) satisfies the requirements under the National Environmental Policy Act (NEPA), with respect to prelease activities. The Secretary is required to prepare an environmental impact statement under NEPA before conducting the first lease sale as a result of this legislation.

The Secretary shall consult with the state of Alaska, the city of Kaktovik, and the North Slope Borough, and may then designate up to 45,000 acres of the Coastal Plans as a "Special Area," to be excluded from leasing. No surface occupancy is allowed on the lands of Special Areas, however horizontal drilling is allowed to be conducted under the surface.

Section 17704 – Lease Sales. The Secretary shall offer no less than 50,000 acres for lease within 22 months of enactment. The Secretary is also required to lease oil and gas lease sales of an additional 50,000 acres (at a minimum) at 6, 12, and 18-month intervals.

Section 17705 – Grant of Leases by the Secretary. This sections states that no issued lease can be sold, exchanged, assigned, sublet or transferred without the approval of the Secretary, in consultation with the Attorney General.

Section 17706 – Lease Terms and Conditions. The section requires royalty payments of at least 12 ½%. The Secretary may close, seasonally, portions of the Coastal Plans as necessary to protect caribou calving and certain species of fish and wildlife.

Section 17707 – Policies Regarding Buying, Building, and Working for America. The Secretary of the Interior is required, when possible and practicable, to encourage the use of United States workers and equipment manufactured in the United States in all construction related to mineral resource development. Many free-market conservatives object to such "Buy American" provisions. These protectionist requirements inherently limit choice and ultimately lead to an increase in the cost of goods and services consumed.

Section 17708 – Coastal Plain Environmental Protection. The Secretary is required to ensure that the oil and gas exploration on the Coastal Plain will not result in adverse effects on fish and wildlife, their habitats, and the environment. The Secretary shall require that oil and gas extraction technology used on leased lands be the "best" that is "commercially available." Additionally, the Secretary will ensure that the maximum amount of surface acreage covered by production and support facilities does not exceed 10% of leased acreage.

The Secretary is also required to conduct site-specific analysis regarding the effects, if any, that the oil and gas extraction would have on fish and wildlife, their habitat, subsistence resources, and the environment. The Secretary will develop a plan to avoid, minimize, and mitigate any significant adverse effects.

The Secretary shall issue regulations, lease terms, conditions, restrictions, etc, in order to ensure that the lease activities in the Coastal Plain do not cause significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment.

The Secretary is also required to ensure that local residents continue to have reasonable access to public lands in the Coastal Plain for traditional uses.

Section 17709 – Expedited Judicial Review. This section requires any complaint seeking judicial review to be filed within 1 year after the date of enactment, and that it must be filed in the U.S. Court of Appeals for the District of Colombia. The legislation prohibits any payment from the federal government to any person for the purposes of covering attorneys' fees and other court costs.

Section 17710 – Treatment of Revenues. This section requires that 50% of the amount of bonus, rent, and royalty revenues from oil and gas leases in the Coastal Plain be deposited in the Treasury.

Section 17711 – Rights-of-Way Across the Coastal Plain. The Secretary shall issue right-of-way and easements across the Coastal Plain for the transportation of oil and gas produced, so long as they do not result in a significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment.

Section 17712 – Conveyance. The Secretary shall convey to the Kaktovik Inupiat Corporation the surface estate of the lands that were withdrawn on from the Kaktovik Village Section March 5, 1993. The Secretary shall convey to the Arctic Slope Regional Corporation the remaining subsurface estate to which they are entitled to pursuant to an August 9, 1983 agreement between the Arctic Slope Regional Corporation and the U.S. federal government.

Committee Action: H.R. 3408 was introduced on November 14, 2011, and was referred to the House Natural Resources Subcommittee on Energy and Mineral Resources. The full committee held a markup on February 1, 2012. H.R. 3408 was approved, as amended, by a roll call vote of 27-16.

H.R. 3407 was approved, as amended by a roll call vote of 29-13. H.R. 3410 was approved, as amended by a roll call vote of 25-19.

H.R. 3548 was introduced on December 2, 2011, and referred to the House Energy and Commerce Subcommittee on Energy and Power. The full committee met on February 6, 2012, and agreed to the legislation, as amended, by a roll call vote of 33-20.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: This CBO estimate is for H.R. 3408 from February 7, 2012: "CBO estimates that enacting H.R. 3408 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects would not be significant over the 2012-2022 period." CBO's estimate can be viewed here.

This CBO estimate is for H.R. 3407 from February 7, 2012: "CBO estimates that implementing H.R. 3407 would increase net offsetting receipts (a credit against direct spending) by about $2.5 billion over the 2014-2022 period." CBO's estimate can be viewed here.

This CBO estimate is for H.R. 3410 from February 7, 2012: "CBO estimates that enacting H.R. 3410 would reduce net direct spending by $1.8 billion over the 2012-2022 period. In addition, CBO estimates that implementing the bill would have discretionary costs of $45 million over the 2012-2017 period." CBO's estimate can be viewed here.

This CBO estimate is for H.R. 3548 from February 9, 2012: "CBO estimates that enacting H.R. 3548 would have no significant impact on the federal budget." CBO's estimate can be viewed here.

Does the Bill Expand the Size and Scope of the Federal Government?: The legislation directs the Secretary to conduct several lease sales on federal lands, thereby allowing the private sector to capitalize on America's domestic energy resources. This is arguably a reduction in the size and scope of the federal government.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: According to House Report 112-392, H.R. 3408 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

According to House Report 112-393, H.R. 3407 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

According to House Report 112-395, H.R. 3410 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

<u>Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?</u>: The legislation contains no earmarks.

<u>Constitutional Authority</u>: According the sponsor, "Congress has the power to enact this legislation pursuant to the following: Article IV, section 3, clause 2." Rep. Lamborn's statement can be viewed here.

<u>RSC Staff Contact</u>: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576