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Legislative Bulletin.....July 30, 2010

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Amendments to H.R. 3534—Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act

The bill is expected to be considered on Friday, July 30, 2010, under a structured rule ([H.Res.1574](#)) that will provide for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI (earmarks & “pay-go”), provides for consideration of nine amendments, and provides one motion to recommit with or without instructions.

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AMENDMENTS MADE IN ORDER UNDER THE RULE

1. **Rahall (D-WV).** The manager’s amendment strikes the term “public health” and “human health” in the bill, strikes biomass as renewable energy, and makes other technical verbiage changes. The amendment clarifies the President’s role in the adjudication and procedures for filing claims against mobile offshore drilling units. The amendment adds a section 731 to the bill affecting unlimited liability provisions to limit liability to claimants who present other claims against responsible offshore facilities. The amendment requires the Comptroller General to conduct a GAO study and issue a report to congress within three years to determine if the CLEAR Act has made the Department of Interior more effective at its oversight mission. The amendment requires the Secretary to work in collaboration with the National Academy of Engineering to provide a report on the economic, environmental, and safety impacts of relief wells. In order to be eligible for permit, the amendment requires operators to institute redundancy plans that specify what actions are to be taken if original response plans fail.

The amendment requires a study between the Secretary and the National Academy of Engineering to determine if the installation of digital meters for natural gas producing lands would increase the accuracy of collecting royalty revenue on the collection of oil, condensate, and natural gas on federal lands. In addition, the study seeks to study the affect of placing requirements on a number of activities for natural gas drilling including engineering schematics, the installation of certain technologies, prohibiting bypass pipes, and adding additional reporting requirements.

The amendment applies the royalty provisions to oil that is saved, removed, or lost regardless whether the discharge was for the benefit of the lease and amends the Gulf of Mexico Restoration Task Force to require the use of citizen advisory councils. Finally, the amendment amends the Outer Continental Shelf Lands Act to require the Secretary of

Interior to determine whether takings authorized under the CLEAR Act will have a negative impact on marine mammal species or stock and not have an adverse impact on stock for subsistence.

2. **Castle (R-DE).** The amendment amends the bill to expressly state nothing in the bill should delay the promotion of offshore wind development, the planning and royalty collection for ocean renewable energy resource facilities, and the developing of efficient leasing and licensing strategies for ocean renewable energy resource facilities.
3. **Kind (D-WI)/Kratovil (D-MD)/Heinrich (D-NM).** The amendment would require that at least 1.5% of funds made available for each fiscal year are made available for projects that secure recreational public access to federal land under the Secretary of Interior for hunting, fishing, and other recreational purposes through easements, rights-of-way, or fee title acquisitions, from willing sellers. *The amendment is supported by the NRA.*
4. **Shea-Porter (D-NH).** The amendment would require the Secretary to update supplementary ethics guidance at least once every three years. The amendment would also include a review of the best available technology for oil spill response and mitigation, and the availability and accessibility of that technology is part of the Offshore Technology Research and Risk Assessment Program. Finally, the amendment would require that operators annually certify that their response and exploration plans include the best available technology.
5. **Teague (D-NM)/Jackson-Lee (D-TX).** The amendment would allow companies to pool their joint insurance together in order to meet financial responsibility requirements. Some conservatives have expressed concern that the amendment is not an alternative to unlimited liability. The amendment may help companies acquire a new lease; however, the amendment will do nothing to improve the chances for a company to acquire reasonable insurance to drill because of the unlimited liability provisions that remain in the bill.
6. **Himes (D-CT).** The amendment would amend the National Resources Damages Act (NRDA) to give equal and full equal and full consideration to allow for the purchase of non-impacted lands. Some conservatives have expressed concern that this provision would undermine the original intent of the NRDA and diverts funds intended for clean-up in the Gulf to allow the federal government to purchase unaffected lands. H.R. 3534 already dedicates approximately \$30 billion in mandatory spending for the acquisition and protection of land.
7. **Connolly (D-VA)/Holt (D-NJ)/Welch (D-VT).** The amendment states that any person (or parent company) having an ownership interest in an oil subsidiary, of more than 25%, is responsible to pay the claims owed by the subsidiary if the subsidiary has insufficient assets to pay claims. This amendment is retroactive to January 1, 2010.
8. **Melancon (D-LA)/Childers (D-MS).** The amendment does not apply the OCS moratoria imposed by Secretary Salazar and President Obama to permits issued after H.R. 3534 is signed into law ***only if the Secretary determines that the applicant:***
 - ◆ complied with the safety requirements set forth in the National Notice to Leases
 - ◆ complied with additional safety standards recommended by the Secretary, and
 - ◆ completed all required safety inspections

If the Secretary determines the applicant has met these requirements, the **Secretary shall make a determination** to issue a permit within 30 days.

In addition, the amendment requires the Secretary to issue a report to Congress on the collection and analysis of the potential causes of the April 20, 2010 explosion of the Deepwater Horizon, implementation of safety described in the May 27, 2010 Department of Interior report, the ability of operators to respond effectively to an oil spill, and industry and government efforts to engineer, design, construct, and assemble wild well intervention and blowout containment resources.

Some conservatives have expressed concern that this amendment grants too much discretion for the Secretary to continue to deny new permits and will do little to lift the moratorium. The only way to ensure the oil and gas industry will stay in the Gulf of Mexico is to require a full repeal of the Administration's imposed moratorium.

9. ***Melancon (D-LA)***. The amendment creates a Gulf of Mexico Restoration Account to be funded by applying civil penalties of \$200 million for each one million barrels of oil or hazardous materials an owner or operator of a facility discharges into the Gulf of Mexico. This is in addition to the unlimited liability established under H.R. 3534, and applies retroactively to April 1, 2010.

Some conservatives have expressed concern that, under the CLEAR Act, producers are already subject to unlimited liability to cover the costs of a spill. This is an additional cost that could create even more disincentive for producers to seek new permits for drilling in the Gulf.

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