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Legislative Bulletin……………………………….………June 29, 2006

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H.R. 4761— Deep Ocean Energy Resources Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: At least four

Total Cost of Discretionary Authorizations: $0

Effect on Revenue: $0

Total Change in Mandatory Spending: Increase of $11.0 billion over ten years (see "Cost to Taxpayers" section below

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Not yet tabulated by CBO

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 4761— Deep Ocean Energy Resources Act—*as reported* (Jindal, R-LA)

Order of Business: The bill is scheduled to be considered on Thursday, June 29th, subject to a rule. Summaries of the amendments made in order under the rule, if any, will be provided in a separate RSC document. Reports indicate that a manager's amendment (possibly self-executing) may address the budget concerns outlined below in the "Possible Conservative Concerns" and "Cost to Taxpayers" sections.

Summary: H.R. 4761 would provide for expanded oil and gas leasing on the Outer Continental Shelf (OCS), the underwater lands adjacent to the coastal areas of the United States. That is, under H.R. 4761, the Secretary of the Interior would offer some OCS areas for leasing that otherwise could not be leased over the next 10 years under current law. Highlights of the bill are as follows:

- **Partial Relinquishment of Leases:** Allows for partial relinquishing of leases (with royalty incentives) so that the federal government could re-lease portions of the OCS that are geologically promising but that are not necessarily being developed under their current lease.

- **Natural Gas Lease Restrictions:** Directs the Secretary of the Interior to establish regulations for natural gas leases on the OCS and limits natural gas leases to tracts located wholly within 100 miles of the coastline.

- **Multiple Leases:** Allows for multiple leases on the same tract of the OCS, if each lease applies to separate vertical depths, horizontal surface areas, or a combination of the two.

- **OCS Definition:** Expands the definition of the OCS to include certain lands surrounding Puerto Rico and other U.S. Territories.

- **OCS Leasing and Revenue-Sharing:** Immediately increases an adjacent state's share of receipts from new leasing activities on the OCS from 27% to 75% of receipts generated within 12 miles of shore and from 27% to 50% of receipts beyond 12 miles of shore. The bill would also extend the distance within which revenue-sharing applies from 15 miles from shore to 200 miles from shore and terminate the existing revenue-sharing regime. **NOTE**: the new revenue-sharing above the baseline scores as new mandatory spending (since it could be spent without further appropriation action from Congress).

- **Joint Bidders in Alaska:** Removes the restrictions on joint bidders on tracts in the Alaska OCS region and on "frontier" or "high-cost" tracts.

- **Uniform Royalty Rate:** Requires that the base royalty rate for new oil and gas or natural gas leases on the OCS be the same for all leased tracts—though the bill does not specific what that uniform rate must be. (Under current law, the royalty rate for production on the OCS varies depending on the depth of the water. Lessees generally pay a 12.5% royalty on revenues from oil and gas produced in waters more than 400 meters deep, and 16.7% in more shallow water.

- **Fees, Instead of Royalties, on Deepwater Leases:** Imposes a new fee ($9 per barrel of oil and $1.25 per million Btu for natural gas) on lessees producing oil or gas in deep waters of the OCS (retroactive to production since October 1, 2005), unless the lease includes limits on the lessee's eligibility for royalty relief when oil and gas prices exceed $40.50 per barrel of oil and $6.75 per million Btu of natural gas (both in 2006

dollars). The Secretary of the Interior would be required to renegotiate certain leases issued in the Gulf of Mexico from December 1, 1995, through December 31, 2000, if requested by the lessee. (This provision is aimed at certain deepwater leases issued in 1998 and 1999 that provided royalty *relief* regardless of the market price of oil or gas. This provision is designed to incent lessees to request renegotiated contracts with royalty relief ceilings, rather than pay the new fee.)

- **Fee on Nonproducing Leases:** Imposes a new "conservation of resources" fee (no less than $1 per acre and no more than $4 per acre) on new and existing leases that are not in production (and thus not yielding royalties), retroactive to October 1, 2005.

- **Phased-In Revenue Sharing on Existing Leases:** Phases in the revenue-sharing with the states from EXISTING leases, starting at 6% in FY2006, going up to 24% in FY2014, and peaking at 50% in FY2022 and each subsequent fiscal year.

- **Leases Within 12 Miles of Shore:** Immediately implements a 75% revenue-share with the states for all OCS leases in production beginning October 1, 2005, within 12 miles of any coastline.

- **Revenue Allocation Within 12 Miles of Shore:** Allocates the state portions of revenues from bonus bids and royalties (at the end of each fiscal year) from leases within 12 miles of shore as follows:

  --85% cash directly to the adjacent state
  --5% to the Federal Energy Natural Resources Enhancement Fund (established by this legislation—see below)
  --5% to the Federal Energy and Mineral Resources Professional Development Fund (established by this legislation—see below)
  --5% to the National Geo Fund (established by this legislation—see below)

- **Leases Beyond 100 Miles of Shore:** Immediately implements a 50% revenue-share with the states for all OCS leases in production beginning October 1, 2005, beyond 100 miles of any coastline.

- **Revenue Allocation Beyond 100 Miles of Shore:** Allocates the state portions of revenues from bonus bids and royalties (at the end of each fiscal year) from leases beyond 100 miles of shore as follows:

  --85% cash directly to the adjacent state (divided amongst nearby states that have a coastline point within 300 miles of any portion of the lased tract, in accordance with a formula in the bill)
  --5% to the Federal Energy Natural Resources Enhancement Fund (established by this legislation—see below)
  --5% to the Federal Energy and Mineral Resources Professional Development Fund (established by this legislation—see below)
  --5% to the National Geo Fund (established by this legislation—see below)

- **Transmission of Allocations:** Requires that, within three months of the end of each fiscal year, the federal government send to each state 60% of its due receipts and to the coastal municipalities of each state 40% of the state's due receipts (in accordance with conditions and formulas detailed in the bill).

- **State Use of Receipts:** Restricts the state-and-local use of these revenue shares to:
  - reducing in-state tuition;
  - making transportation infrastructure improvements;
  - reducing taxes;
  - providing for environmental protection and restoration, waterways construction, levee construction, shore protection, or marine education and research;
  - improving OCS infrastructure for energy production;
  - funding energy demonstration projects;
  - funding geologic programs (including mapping);
  - fostering alternative energy development;
  - funding energy conservation programs;
  - promoting historic preservation;
  - planning for natural disasters;
  - providing for natural disaster insurance programs;
  - providing matching funds for other federal programs; or
  - "any other purpose as determined by State law."

  Note: The legislation would, however, explicitly not require that states and localities account for these expenditures to the federal government.

- **Presidential Authority:** Clarifies that the President has the authority to completely revise or revoke any prior presidential withdrawal of lands from oil and gas exploration and development. Future withdrawals of lands could not be for more than ten years at a time.

- **State Petitions for Leasing:** Prohibits leasing within 50 miles of the coastline in areas currently unavailable for leasing, unless a state petitions for leasing (i.e. opts out of the prohibition). For areas between 50 and 100 miles of shore, states would have one year in which to petition to prevent (opt in) natural gas leasing in areas currently unavailable for leasing, and three years in which to petition to prevent oil and gas leasing. If the state fails to act within those time periods, its offshore areas between 50 and 100 miles would be made available for leasing. The area of the OCS currently under moratoria would become immediately available for leasing if it is more than 100 miles from the coastline.

- **Neighboring States:** Prohibits natural gas leasing from occurring within 25 miles of the nearest point of the coastline of a neighboring state, and oil and gas leasing within 50 miles of the coastline of a neighboring state, unless the neighboring state already has leasing within those same distances or expresses its concurrence.

- **Conflicts:** Provides for the President to resolve any conflicts between federal agencies regarding the use of the OCS (e.g. military needs vs. energy needs).

- **Pipelines Sitings:** Requires approval from affected states for oil and gas pipeline sitings, but prevents states from prohibiting the landing of a pipeline transporting natural gas from the OCS. However, a state could veto a particular landing location if it proposes two acceptable landing locations within 50 miles on either side of the proposed location.

- **Environmental Assessments:** Exempts lease suspensions and pre-leasing OCS activities from the need to prepare environmental assessments or environmental impact statements. In addition, the bill limits the environmental assessments necessary under the new OCS leasing program. Requires that, at least every 10 years, a development plan in each planning area must be subject to an environmental impact statement (current law requires only the first development plan in an area to have such a statement).

- **Development Plan Reviews:** Requires holders of oil or natural gas leases to submit a development and production plan to Secretary of the Interior for determinations of compliance with mandated lease terms and applicable statutes and regulations. Provides for adjustments to be made to proposed plans and for termination of leases based on an improper plan (or no plan).

- **Natural Resources Enhancement Fund:** Establishes a Federal Energy Natural Resources Enhancement Fund, to be funded by receipts from mineral leasing royalties and bonus bids, to create new projects for monitoring and managing fish and wildlife and the air, water, and other natural resources related to energy and mineral development on federal onshore and offshore lands (including "projects to teach young people to live off the land"). Disbursements could be made <u>without further appropriations</u> action from Congress. Two-thirds of the amounts in the Fund each year would have to be disbursed to states. Funds could not be used to buy land.

- **Existing Prohibitions:** Terminates the effect of <u>all</u> provisions of federal law prohibiting the expenditure of appropriated funds for OCS oil and natural gas leasing and pre-leasing activities.

- **Restricted Transportation Corridors:** Prohibits (subject to presidential waiver) the construction or operation of any facility, or the designation or maintenance of a restricted transportation corridor, on the OCS that would be incompatible with mineral exploration and leasing.

- **Repurchase:** Authorizes the Secretary of the Interior to repurchase and cancel onshore and offshore leases if the lease is not allowed to be explored and/or developed under certain circumstances.

- **Service Renaming:** Renames the Minerals Management Service in the Department of the Interior as the "National Ocean Resources and Royalty Service."

- **Use of Old Oil and Gas Platforms:** Authorizes decommissioned offshore oil and gas platforms and related facilities for culturing marine organizations, for an artificial reef, or for any scientific purpose. States could petition to opt-out of this provision for platforms within 12 miles of the coastline. Limits the liability of former users of transferred platforms.

- **Inventory of OCS Resources:** Repeals the requirement in Section 357 of the Energy Policy Act (42 U.S.C. 15912) to conduct a comprehensive inventory of OCS oil and gas natural resources.

- **Mineral Engineering Education:** Establishes a Federal Energy and Mineral Resources Professional Development Fund, to be funded by receipts from mineral leasing royalties and bonus bids, to provide money to certain colleges, universities, and vocational schools that offer training in petroleum, mining, or mineral engineering. Disbursements could be made without further appropriations from Congress. Funds could not be used to buy, lease, preserve, or repair land or a building. Schools accepting funds would have to maintain an energy and mineral research program for at least ten years after first accepting the federal money. The Secretary of the Interior would have to appoint a 17-person committee to make recommendations regarding the disbursement of these education funds.

- **Mineral Lease Fees:** Prevents the creation of new fees by Department of the Interior applicable to federal onshore and offshore mineral leases that were not in effect on the date of lease issuance.

- **OCS Headquarters:** Requires the Secretary of the Interior to establish a headquarters for the Atlantic OCS Region and a headquarters for the Pacific OCS Region in willing states, and permanently locates the headquarters for the Gulf of Mexico Region in Louisiana within 25 miles of Jackson Square, New Orleans.

- **Geologic Mapping:** Establishes a National Geo Fund, to be funded by receipts from mineral leasing royalties and sales, to conduct geologic mapping and preserve and make available geologic data. Disbursements could be made without further appropriations from Congress. Two-thirds of the amounts in the Fund each year would have to be disbursed to states. Funds could not be used to buy land.

- **Strategic Unconventional Resources:** Creates a new program funded by the National Geo Fund for the production of fuels from strategic unconventional resources (such as oil shale and tar sands) and of oil and gas resources using carbon dioxide enhanced recovery. The bill lists several regional pilot projects to be completed under this program.

- **Geothermal:** Creates a new grant program funded by the National Geo Fund for the support of geothermal and geopressure oil and gas energy production.

- **Liquid Fuels:** Creates a new grant program funded by the National Geo Fund for facilities for coal-to-liquids fuels.

- **Ocean Waves:** Creates a new grant program funded by the National Geo Fund for the production of renewable energy from ocean waves, currents, and thermal resources.

- **Leases Within 100 Miles off the Coast (FL & CA):** Gives lessees located within 100 miles of the coast of Florida or California the option of exchanging their respective leases for new leases on any unleased tract on the OCS that is available for leasing. The old leases would be cancelled without compensation. Such exchanges could not occur until the earlier of July 1, 2010, or the date on which a state petition for leasing in the area was approved. Provides that an existing oil and gas lease located partially within 100 miles of the Florida coastline could only be developed and produced using wells drilled from well-head locations at least 100 miles from the Florida coastline to any bottom-hole location on the area of the lease (if Florida does not petition for leasing closer to the shore than 100 miles).

- **Oil Shale and Tar Sands:** Amends the new oil shale program in the Energy Policy Act of 2005 by establishing a royalty framework explicitly modeled after the Canadian model: host states would retain 2/3 of the non-federal share of oil shale and tar sands lease revenues, and the remaining 1/3 would go to counties hosting the oil shale and tar sands production. During the first 20 years of production from a lease, the state and counties would receive 50% of the federal share of lease revenues, including bonus bids and royalties, which could be used (without further appropriation from Congress) by the state and counties to support infrastructure related to oil shale and tar sands production (without accounting for such expenditures).

- **Rural Schools:** Earmarks $50 million of OCS receipts for each of fiscal years 2007 through 2012 to fund the Secure Rural Schools and Community Self-Determination Act (Public Law 106-393), which provides funding for rural forested counties that no longer receive revenues from federal timber sales.

Additional Background: According to the Resources Committee, "the U.S. is more than 60 percent dependent on foreign sources of oil to meet our domestic energy requirements." The committee also points out that we are nearly 100% dependent on crude oil for our transportation fuel, and population increases continue to strain our energy needs.

Under current law, moratoria through June 2012 generally prohibit new leasing and pre-leasing activities in most OCS areas outside of the western and central Gulf of Mexico (though leasing occurs in small parts of the eastern Gulf of Mexico and the Alaskan OCS). This bill would lift the moratoria and allow for increased energy production throughout the OCS to address America's growing energy needs and increased reliance on foreign sources of energy.

This bill has some of the same language that was originally part of the House's Deficit Reduction Act (H.R. 4241) last year. To see the RSC Legislative Bulletin on last year's OCS language, which was not included in the final spending reconciliation bill signed into law, visit this webpage and scroll to page 4: http://www.house.gov/pence/rsc/doc/LB%2011-08-05--Resources%20Reconciliation.doc.

Committee Action: On February 15, 2006, the bill was referred to the Resources Committee, which, on June 21st, marked up, amended, and reported the bill to the full House by a vote of 29-9.

Possible Conservative Concerns: According to CBO, the bill, as currently written, would increase mandatory spending by $3.2 billion over five years and greatly exceed the House Resources Committee's 302(a) budget allocation. As a result, according to the House Budget Committee, the bill violates the Budget Act. While expanding the areas permissible for OCS leasing typically increases receipts to the federal government and therefore saves money, H.R. 4761 essentially transfers most of these savings to the states in new revenue-sharing arrangements.

According to the House Budget Committee, "the bill violates Section 302 of the Congressional Budget Act because it increases direct spending by an amount… exceed[ing] the allocation of direct spending to the Resources Committee provided pursuant to H.Con.Res. 376." *If the bill comes to the floor in its present form, Members will be asked to waive points of order lying against H.R. 4761* (and thus waive the budget resolution) in voting for the rule governing consideration of the bill. RSC staff continue to work with House Leadership, the Resources Committee, the Budget Committee, and Rep. Jindal's office to address this budget issue before the bill comes to the floor. RSC staff will update member offices as the situation develops.

Administration Position: Although a Statement of Administration Policy on this bill is not yet available, a representative of the Interior Department stated before the Resources Committee on June 14, 2006, that, "The Administration supports opening up additional oil and gas resources for development on the OCS that are not currently available for leasing, and could support appropriately structured revenue sharing from new areas. However, we have serious concerns about this bill because of its excessive short and long term costs. Therefore we would like to work with the Committee to amend the bill to address these concerns." To read the Administration's complete statement, visit this webpage: http://resourcescommittee.house.gov/archives/109/testimony/2006/johnnieburton.htm.

Cost to Taxpayers: CBO reports that H.R. 4761, as reported from committee, would score at **increasing** mandatory spending by a net $900 million in FY2007, $3.2 billion over the FY2007-FY2011 period, and $11.0 billion over the FY2007-FY2016 period. These increases would exceed the Resources Committee's allocation under the budget resolution and would thus violate the Budget Act. The RSC is working to bring this bill into compliance with the budget.

NOTE: the CBO score does not account for the dynamic effects of mineral leasing (e.g. corporate tax revenues and jobs generated from the increased energy production).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would create at least four direct spending new programs—and several new sub-programs within these programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO confirms that there are no intergovernmental mandates. CBO will provide a separate analysis of any private-sector mandates.

Constitutional Authority: The Resources Committee, in House Report 109-531, cites constitutional authority in Article I, Section 8, Clauses 14 (the congressional power to makes rules for the government and for the land and naval forces) and 18 (the congressional power to make all laws necessary and proper for carrying into execution the foregoing powers given to Congress). The report does not cite Article IV, Section 3, Clause 2, which grants Congress the power to dispose of and make all "needful" rules and regulations respecting the territory or other property belonging to the United States.

Outside Organizations: The bill is publicly supported by hundreds of organizations, including:

- American Chemistry Council
- American Conservative Union
- American Farm Bureau Federation
- American Gas Association
- Americans for Tax Reform
- Coalitions for America
- Competitive Enterprise Institute
- Citizens Against Government Waste
- Edison Electric Institute
- FreedomWorks
- Frontiers of Freedom
- National Association of Manufacturers
- National Center for Public Policy Research
- National Mining Association
- 60 Plus Association
- U.S. Chamber of Commerce

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