October 6, 1977

OUTER CONTINENTAL SHELF AMENDMENTS
(H R 1614)

BACKGROUND

Offshore oil and gas first became the subject of public debate during the Tidelands Oil controversy of the late 1940's and early 1950's. The dispute arose from President Truman's Proclamation on the Continental Shelf. In this document, the federal government asserted a claim to ownership of all mineral deposits lying offshore, to the exclusion of the states. Various court challenges followed, with the issue finally being resolved through passage of the Submerged Lands Act of 1953. While the statute established the jurisdictional boundaries for state and federal control, it did not address the question of federal leasing of mineral deposits. This problem was solved by enactment of the Outer Continental Shelf Act of 1953. This statute, which has only experienced one minor amendment in the intervening years, has remained the major legislation concerned with OCS mineral deposits.

Recently, a number of developments have again focused attention on offshore oil and gas. First among these was the Santa Barbara oil spill, and second was the 1973 Arab oil embargo. Unfortunately, these two events have created two widely divergent attitudes toward development of the Outer Continental Shelf.

Environmentalists feel that the risks associated with offshore operations are unacceptable and, therefore, want development of

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this resource curtailed. In supporting their contention that OCS development is necessary to reduce our dependence on foreign imports, proponents of OCS development point to the fact that as much as one-third of our recoverable oil and natural gas reserves may lie under the ocean sands. The conflict between these two competing schools of thought was largely responsible for the establishment of the Ad Hoc Committee on the Outer Continental Shelf. It was thought that such a committee could devote its full attention to resolving the dilemma.

STATUS

HR 1614 was introduced on January 11, 1977, by John Murphy (D-NY), Chairman of the Ad Hoc Committee on the Outer Continental Shelf. Hearings were held on February 4 and 5, March 3, 7, and 28, May 9, 10, 11, and 12, and June 9. Markup began on July 25, and the bill was reported with a vote of 11 to 8. The bill is pending the issuance of a rule, but is expected to go to the Rules Committee on October 4 and to the floor a week later.

PROVISIONS

One of the most significant provisions of HR 1614 concerns the procedures for issuing leases for offshore oil and gas. It calls for the Secretary of the Interior to implement new types of bidding outlined in the bill in at least 50% of all lease agreements. It also provides the Secretary relatively broad discretion with regard to lease cancellation. Joint bids among major producers are prohibited, and detailed reports of lease activities are required. The bill will also extend the authority of OSHA into certain areas of OCS employment which were previously exclusively within the purview of the Coast Guard. HR 1614 would restrict employment by former federal bureaucrats in related industries for a specified period after they left the government, and would also require extensive financial disclosure while they were still in government service. Among the measure's most controversial provisions is one which would allow the federal government to enter into exploration of the Outer Continental Shelf. Also, it would require detailed reports outlining exploration and development plans of commercial leaseholders. The bill contains extensive requirements for environmental studies which must be completed prior to the initiation of drilling or other exploratory activities.

Employment on offshore facilities will be restricted by HR 1614 in that there will be limitations on the employment of foreign workers on these sites. This will be accomplished through manning, registration and documentation requirements. Also, the bill creates very broad standing for citizen suits

by authorizing anyone who has an interest (or who may have an interest) that could be adversely affected by offshore operations to sue.

EXPANSION OF OSHA JURISDICTION

One of the more controversial provisions of the bill is the expansion of the jurisdiction of the Occupational Safety and Health Administration to include worker safety on the Outer Continental Shelf. In the past this area has been within the jurisdiction of the Coast Guard. Concern exists that OSHA's lack of expertise in this area will lead to regulations similar to those which have plagued industries it currently oversees. Specifically, considerable concern has been expressed that the impact of OSHA legislation will be to put many small divers out of business, due to an inability on their part to cope with the paperwork which will be required.

Advocates of this extension of OSHA jurisdiction point to the fact that OSHA has responsibility for worker safety in most areas and contend that this extension would only serve to make their oversight function more complete. Opponents, citing numerous complaints stemming from OSHA regulations, see the relative competency of the Coast Guard as good reason to allow safety of OCS workers to remain within Coast Guard auspices.

MANDATORY BIDDING SYSTEMS

Proponents of mandatory bidding systems claim that they will allow for greater competition and for the entry of small firms into the area of offshore oil development. While there is little controversy over the concept that alternatives to the present bidding system be available, there is a considerable amount of disagreement with the concept that a specific portion of leases be granted under such procedures. The basic objection lies in the fact that Congressional action would be necessary for authorization of the use of standard bidding procedures by the Secretary of the Interior. This, of course, would tend to lengthen the time required for the issuance of leases.

DUAL LEASING

A great deal of disagreement exists over the concept of dual leasing. Proponents of this provision, which separates the exploration of a lease from its development, claim that it is a method of insuring that small companies become involved in the development of the OCS deposits. Opponents point out that it would be up to the government to decide when exploration was completed and development was to begin, and further

argue that the creation of a new and massive bureaucracy would be necessary in order to police the administration of this procedure.

FEDERAL EXPLORATION

The question of federal exploration of lease areas is one with significant impacts. Proponents of this measure contend that it allows the federal government to step in and initiate exploration when it is determined that efforts by private sector leaseholders have been inadequate. It is said by the section's supporters that this is necessary to insure adequate development of offshore reserves at a time when increasing dependence on foreign imports presents a threat to national security. Opponents of this section point to the fact that as long as it is economical to develop offshore oil, private sector developers will be available. They do not feel that burdening the taxpayer with the expense of exploration, one normally borne by industry, is equitable; further, they maintain that there is no evidence to support the contention that federal exploration will be in any way superior to that conducted by the private sector.

LEASE CANCELLATION

Proponents of the lease cancellation section contend that it is necessary to protect against speculation. There are serious legal and Constitutional problems with this section, however, according to its opponents. They note that a contract cannot exist without the consent of both parties and that, therefore, setting such a provision in law precludes the possibility of such mutual consent. Further, as the statue would set the amount of compensation, the concept of just compensation for property contained in the Constitution is patently ignored. It is within the realm of possibility that this provision would not survive a court challenge, but that would have to be determined at a time after its enactment.

BEST AVAILABLE AND SAFEST TECHNOLOGY AND CITIZENS SUITS

The text of HR 1614 contains a requirement that operations on the Outer Continental Shelf utilize the "best available and safest technology." This provision is similar to the best available technology language used in the Clean Air Act and Clean Water Act. Proponents of such language feel that it is necessary to insure that the environment is adequately protected. As support for their positions, they note the problems which have resulted from oil spills. Opponents of this language point to the tremendous difficulties which have resulted from the inclusion of similar language in the Clean Air and Clean

Water Acts. They note that one result of this language, coupled with the ability of a broad spectrum of individuals to sue under the expanded standing the language of HR 1614 also includes, will be to delay most development of offshore deposits. Previous experience with such broad standing as is included in the language of HR 1614 has been that many groups with relatively narrow interests seize upon the judicial process as a tool for delaying development. The opponents of this language note that the development of these resources is felt to be essential to national security, and that, therefore, it would seem reasonable to amend the language so that those with a genuine interest would have standing in court while those who merely wish to act as obstructionists would not.

SUMMARY

The purpose behind the drafting of HR 1614 was to update the OCS law in a fashion which would resolve the conflict between our need to develop offshore oil and gas resources and our desire to protect the environment. The controversies surrounding some sections of the legislation may indicate to some that this purpose has not been fully achieved. The purpose is certainly a worthwhile one, however, and it may be that through cooperation and compromise it ultimately will be accomplished.

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