



## **Legislation Proposed by House Democrats Seeks Sweeping Restructuring of Federal Onshore and Offshore Energy Programs: The Consolidated Land, Energy, and Aquatic Resources Act of 2010**

**By:** [Bret Sumner](#)

In reaction to the Deepwater Horizon spill in the Gulf of Mexico, the Committee on Natural Resources of U.S. House of Representatives recently released a majority staff discussion draft of the proposed "The Consolidated Land, Energy, and Aquatic Resources Act of 2010" (the CLEAR Act). This proposed legislation is sweeping in seeking to "reform" the planning, leasing, and royalty collection regimes for both onshore and offshore federal minerals. Many of the onshore provisions have been taken from the previous energy bill introduced last year by Congressman Rahall, called the "Federal Lands and Resources Energy Development Act of 2009."

In addition to completely restructuring future energy leasing, siting, and development, the CLEAR Act will also likely have ramifications for development on existing leases. This legislation also includes significant provisions regarding creation of a leasing program for wind and solar energy sources. Below is a brief summary of select key provisions related to onshore oil and gas leasing and development.

### **Title I – Creation of New Agencies within the Department of the Interior**

Title I of the CLEAR Act creates new agencies within the Department of the Interior (Interior). The CLEAR Act establishes the Bureau of Energy and Resource Management, responsible for "all functions, powers, and duties . . . relating to the administration of a comprehensive program of nonrenewable and renewable energy and mineral resources management." The legislation proposes that this Bureau also have an independent office within it responsible for conducting environmental studies and analyses for any energy programs administered by the Bureau.

Next, the CLEAR Act proposes to establish a Bureau of Safety and Environmental Enforcement, responsible for “all safety and environmental enforcement activities” related to Interior energy programs, including “performing necessary oversight activities to ensure the proper application of environmental reviews, including those conducted under the National Environmental Policy Act.” The proposed legislation also creates an Office of Natural Resource Revenue, which would be responsible for the administration of royalty and revenue management functions related to energy programs administered by Interior.

## **Title II - Onshore Provisions**

### **Section 221- Diligent Development – “Use it or Lose it”**

Title II includes provisions for diligent development of leases. This provision is the so-called “use it or lose it” provision that has been pushed by environmental advocates who criticize the number of acres under lease that are not producing. The diligent development provision requires the Secretary to develop “benchmarks for oil and gas development” and the requirement that lessees submit a “diligent development plan showing how the lessee will meet the benchmarks.” Lessees are subject to lease termination if they fail to comply with any requirements issued under the diligent development section.

### **Onshore Leasing**

The CLEAR Act proposes to eliminate non-competitive leases. For competitive leasing, bidding on lease will no longer be by live auction but conducted only through sealed, competitive bidding. The legislation also proposes to reduce onshore lease sales from four times per year to “no more than 3 times per year per State.”

The legislation proposes to empower the Secretary of the Interior with the authority to decide “whether to accept a bid and issue a lease within 90 days following payment by the successful bidder . . . .” thereby eliminating the existing mandatory duty imposed on the Secretary under the Mineral Leasing Act to issue the leases to the successful bidder within 60 days of payment.

The legislation provides that royalty rates will be “not less than 12.5% on “production removed or sold from the lease.” This language reflects the current administration’s view that the Secretary of the Interior has the authority to change the royalty rates for new leases. Annual rental rates will be \$2.50 per acre per year for the first five years, and “not less than \$3 per acre per year for each year thereafter.”

The legislation also instructs the Secretary to promulgate “regulations that require oil and gas operators to use best management practices that ensure the sound, efficient, and environmentally responsible development of oil and gas on Federal lands in a manner that shall avoid, where practical, minimize, and mitigate actual and anticipated impacts to environmental habitat functions resulting from oil and gas development.”

### **Surface Disturbance – Reclamation**

The CLEAR Act requires applications for permits to drill (APDs) to include both interim and final reclamation plans “covering proposed surface-disturbing activities within the lease area.” This provision also requires that Interior impose sufficient bonds “to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease.” In the event an operator has not complied with applicable reclamation plans, then Interior is empowered to not issue any new lease to the operator until such compliance is achieved.

### **Wildlife Sustainability**

The CLEAR Act requires Interior, in cooperation with the appropriate State fish and wildlife agency, to “plan for and manage planning areas . . . in order to maintain sustainable populations of native species and desired non-native species within each planning area.” This provision also establishes detailed monitoring and evaluation programs for these species.

### **Hydraulic Fracturing Disclosure**

Section 229 of the CLEAR Act requires disclosure of hydraulic fracturing information in an on-line forum available to the public. This disclosure is required within 30 days after completion of drilling a well, and must include “the list of chemicals used in drilling or completing the well, including the chemical constituents of mixtures, Chemical Abstract Service numbers, and material safety data sheets” and be made available to the public on an “Internet website created and maintained by the Bureau of Land Management.”

### **Title III – Oil and Gas Royalty Reform**

Title III addresses federal oil and gas royalty issues that have advocated by Democrats for many years. As written, this provision will introduce significant changes to several provisions of the Federal Oil and Gas Royalty Management Act of 1982. The changes encompass a broad array of topics including

increased fines and penalties for royalty violations, elimination of interest accrual on overpayments, and continuing liability for royalty payments by operating interests and record title owners.

**Preliminary Observations.** The scope of the CLEAR Act is unprecedented and, if enacted, has potential significant ramifications for new leasing and development, but also development on existing leases.

While this legislation has been introduced late in the Congressional session, there is still the possibility that the Democrat-controlled Congress may try to force passage during the lame duck session after mid-term elections. The committee mark-up of the bill is scheduled for July 14, 2010. After release from committee, the legislation goes to the full House, then Senate, then to a conference committee. In addition to engaging Congress, there are also opportunities to engage the Office of Management and Budget, and the House and Senate Appropriations committees that will be eventually tasked with funding the new FEML Office and related programs.

The comprehensive restructuring proposed for management and administration of federal energy leasing and development on federal lands involves amendment and/or interaction with numerous existing federal statutes, including: the Mineral Leasing Act, Mineral Leasing Act for Acquired Lands, the Federal Oil and Gas Royalty Management Act, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, the Federal Land Policy and Management Act, and the Energy Policy Act of 2005.

Detailed legal analysis still needs to be performed to determine the full extent of the potential implications of the proposed Energy Bill, as well as whether certain provisions are viable under existing law.

For a copy of the legislation or for more information, please contact [Bret Sumner](#), [Matt Crockett](#), or [Bill Sparks](#).