**CONGRESSIONAL BUDGET OFFICE**
**PRIVATE-SECTOR MANDATES STATEMENT**

June 28, 2006

# H.R. 4761

## Deep Ocean Energy Resources Act of 2006

*As ordered reported by the House Committee on Resources on June 21, 2006*

## SUMMARY

H.R. 4761 would make several changes to programs related to the development of federally-owned resources, particularly oil and natural gas production on the Outer Continental Shelf (OCS). The bill would impose new "conservation of resources" fees on oil and natural gas production on certain deep-water acreage, as well as on all deep-water acreage that is not in production. At the same time, the bill would make additional areas of the OCS available for lease for oil and natural gas production. It also would change some of the terms of existing leases to the benefit of the lessees.

CBO estimates that, if the bill were enacted, private entities would make additional payments to the government totaling about $12.5 billion over the 2007-2016 period. It is unclear whether those payments would be the result of new mandates as defined in the Unfunded Reform Mandates Act (UMRA).

## PRIVATE-SECTOR MANDATES CONTAINED IN THE BILL

H.R. 4761 would establish a set of "conservation of resources" fees for certain leaseholders. Section 6 would amend the Outer Continental Shelf Lands Act to require that the Department of the Interior issue regulations establishing a "conservation of resources" fee set at $9 per barrel for oil and $1.25 per million Btu for natural gas on production from certain leased acreage. This fee would effectively apply to certain deep-water leases entered into in 1998 and 1999 that provided royalty relief regardless of the market price of oil or gas. Those leaseholders could avoid the fee, though, if they request that the Secretary of the Interior renegotiate the royalty relief provisions of their original leases so that they would pay royalties on oil and gas production when prices exceed $40.50 per barrel of oil and $6.75 per million Btu of natural gas (both prices in 2006 dollars). The Department of the Interior also would be required to issue regulations establishing a "conservation of resources" fee on all acreage that is not in production for both new and existing leases. The bill would direct the Secretary to set that fee at no less than $1 per acre and no more than $4 per acre. Both fees would apply retroactively to volumes produced since October 1, 2005.

CBO estimates that leaseholders affected by the fee on wells currently in production would pay an additional $11.4 billion over the next 10 years, assuming most leaseholders opt to pay royalties under a renegotiated lease instead of the proposed fee. The "conservation of resources" fee on leased acreage that is not in production would cost the private sector an estimated $1.1 billion over the next 10 years. These costs to the private sector are equal to the fees that would be collected by the federal government, as reported in CBO's federal cost estimate of H.R. 4761 released on June 26, 2006.

It is, however, unclear whether these fees are mandates as defined in UMRA. The fees would apply to existing deep-water leases that include a standard provision providing that they are subject to "all regulations issued pursuant to [the Outer Continental Shelf Lands Act] in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein." Excluded from UMRA's definition of "federal private-sector mandate" are duties "arising from participation in a voluntary federal program." Therefore, CBO considers any requirements that are imposed pursuant to a voluntary contract with the federal government, such as a deep-water lease, not to be private-sector mandates.[1] It is unclear whether the imposition of "conservation of resources" fees is so clearly contemplated by the existing lease agreements that it can be said to have been voluntarily accepted by the leaseholders and therefore is not a mandate under UMRA. If the fees do not constitute pre-existing duties under the leases, they would represent new enforceable duties imposed by H.R. 4761 and would be mandates under UMRA.

The bill contains other changes in the financial terms of oil and gas leases that would benefit the private sector. Under the bill, the Secretary of the Interior would offer some OCS areas for leasing that otherwise may not be leased over the next 10 years under current policies. Section 17 would direct the Secretary of the Interior to repurchase and cancel certain federal leases and to compensate the lessee for the amount that the lessee would receive in a restitution case for material breach of contract. Also, some terms of existing leases would be changed to the benefit of leaseholders.

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1. For example, fees imposed on new non-producing leases would not constitute private-sector mandates because acceptance of the lease agreement would carry with it an obligation to pay the fee.

## PREVIOUS CBO ESTIMATE

CBO's analysis of the federal costs and intergovernmental impact of H.R. 4761 was transmitted on June 26, 2006.

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