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Senators Concerned Ruling Will Lead to Loss of Offshore Oil, Gas Royalties

By Dina Cappiello, CQ Staff

At least two dozen senators have signed a letter to President Bush expressing concern about the potential loss of billions of dollars in offshore oil and gas royalties stemming from a federal court decision last week.

The letter, written by Energy and Natural Resources Chairman Jeff Bingaman, D-N.M., and expected to be delivered to the White House on Wednesday, asks Bush to take concrete steps to address the loss of as much as $60 billion in payments by companies operating in the Gulf of Mexico over the next 20 years. House Democrats are banking on billions of dollars in drilling royalties to offset tax incentives they have included in energy and farm legislation.

"In a time when critical national needs cannot be met because of a lack of federal resources . . . giving the oil and gas industry billions of dollars of the public's natural resources for free . . . is not an acceptable outcome," the senators wrote.

Democrats have moved aggressively this year to recoup some royalties not collected on leases signed between 1995 and 2000. Energy firms signing deepwater contracts at that time were exempt from royalty payments under a law (PL 104-58) designed to spur production — unless prices, volume or depth exceeded certain limits.

A federal judge in Louisiana last week found that Kerr-McGee Oil & Gas Corp., now Anadarko Petroleum Corp., did not have to pay royalties on production from a handful of leases despite oil and gas prices that exceeded thresholds in the contracts.

Although lawmakers have focused mostly on flawed leases that left out the price triggers, the court's decision could allow 60 to 65 energy companies to avoid paying royalties on production from thousands of leases from the period that included the thresholds.

As much as $1 billion in royalties might have to be refunded if the ruling stands, according to the letter that Bingaman began circulating to colleagues Monday. The Justice Department is expected to appeal.

New Fees and Taxes?

Some Democratic senators are already talking about imposing new taxes and fees on oil and gas companies to cover shortfalls if the decision stands.

The House-passed farm bill (HR 2419) would tap about $6 billion over 10 years in oil and gas royalties, while energy legislation (HR 6) the House passed in January would use new offshore drilling funds to finance renewable-energy tax incentives.

The House legislation includes new fees on energy companies that escaped royalties altogether in the 1990s.

However, the court's decision would also apply to leases signed in 1996, 1997 and 2000 that did require royalty payments when oil and gas prices soared.

"This would be effective on all companies with leases during that period of time," former Sen. John Breaux (1987-2005) wrote in a letter to Senate Finance Chairman Max Baucus, D-Mont., and the panel's ranking Republican, Charles E. Grassley of Iowa.

Breaux, a Democrat who is now a lobbyist with Patton Boggs, said levying fees after the fact could dissuade companies from signing new leases until legal disputes were settled.

Anadarko CEO Jim Hackett said in a statement Tuesday that the ruling upheld Congress's original intent. Despite the exemption, he said, "bonuses, royalties, and income taxes on deepwater production paid to the federal government have grown" since 1995.

Source: **CQ Today**
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