



Pending Energy Bill May Breach Oil and Gas Lease Contracts

As was reported in a January 16, 2007 *Wall Street Journal* editorial, Democrats in the US House of Representatives recently introduced an “Energy Security Bill,” H.R. 6, that presents serious breach of contract issues for holders of certain oil and gas leases. One section of the bill—the “Royalty Relief for American Consumers Act”—seeks to change retroactively the terms of “leases for drilling rights in the Gulf of Mexico” entered into by “the Clinton Administration’s Interior Department in 1998-99.”

The affected leases established royalties for oil extracted at market prices below \$35 per barrel, but, according to the *Journal*, the leases “were signed without a requirement of royalty payments if the price of oil rose above \$35 a barrel.” The *Journal* reports that “the Democratic bill strong arms oil companies” holding such leases “into renegotiating the contracts or pay[ing] a \$9 per barrel royalty fee” on oil extracted from the leased tracts. Arnold & Porter LLP attorneys have reviewed the draft legislation, concur with the *Journal*’s description, and note that similar provisions apply to gas leases.

Legislation targeted at altering the terms of a specific group of government contracts may constitute a breach, entitling the affected party to damages including recovery of payments made under the contract or lost profits. Arnold & Porter has litigated claims for legislative breaches involving tax and regulatory bills affecting the energy, home building, and banking industries, and has won judgments exceeding \$500 million.

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Washington, DC
+1 202.942.5000

New York
+1 212.715.1000

London
+44 (0)20 7786 6100

Brussels
+32 (0)2 517 6600

Los Angeles
+1 213.243.4000

San Francisco
+1 415.356.3000

Northern Virginia
+1 703.720.7000

Denver
+1 303.863.1000

This summary is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation.

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Arnold & Porter attorneys will continue to monitor the “Energy Security Bill” and stand ready to assist lease holders who may be adversely affected. For additional information, please contact any of the following Arnold & Porter attorneys:

Mel Garbow

+1 202.942.5899

Mel.Garbow@aporter.com

Howard Cayne

+1 202.942.5656

Howard.Cayne@aporter.com

Kent Yalowitz

+1 212.715.1113

Kent.Yalowitz@aporter.com

David Bergman

+1 202.942.5474

David.Bergman@aporter.com

Michael Johnson

+1 202.942.5783

Michael.Johnson@aporter.com