

API International Trade and Customs Conference



Washington Report

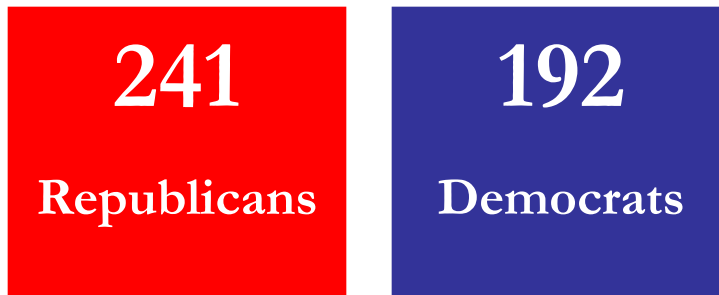
March 28, 2011

112th Congress

- Republican Gains in the House and Senate
- New Make up of key committees

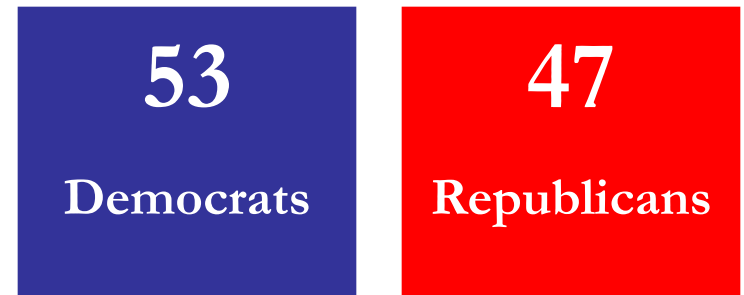
112th Congress

House of Representatives



Republicans gained 63 seats
(Currently two vacancies)

Senate



Republicans gained 6 seats
(Democratic Caucus includes two independents)

House of Representatives

Republican Leadership



Speaker of the House

Congressman John Boehner (R-OH)



Majority Leader

Congressman Eric Cantor (R-VA)

House of Representatives

Democratic Leadership



Minority Leader

Congresswoman Nancy Pelosi
(D-CA)



Minority Whip

Congressman Steny Hoyer
(D-MD)

House of Representatives

Key Committees

Homeland Security Committee



Chairman
Congressman
Pete King
(R-NY)



Ranking
Member
Congressman
Bennie
Thompson
(D-MS)



Chairman
Congressman
Hal Rogers (R-
KY)



Ranking
Member
Congressman
Norm Dicks
(D-WA)



Chairman
Congressman
Dave Camp
(R-MI)



Ranking
Member
Congressman
Sander Levin
(D-MI)

House of Representatives

Key Committees

Natural Resources Committee



Chairman
Congressman
Doc Hastings
(R-WA)



Ranking
Member
Congressman
Edward Markey
(D-MA)

Energy and Commerce Committee



Chairman
Congressman
Fred Upton
(R-MI)



Ranking Member
Congressman
Henry Waxman
(D-CA)

Senate

Leadership



Majority Leader

Senator Harry Reid
(D-NV)



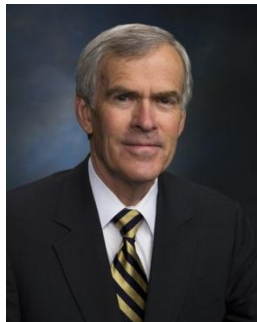
Minority Leader

Senator Mitch McConnell
(R-KY)

Senate

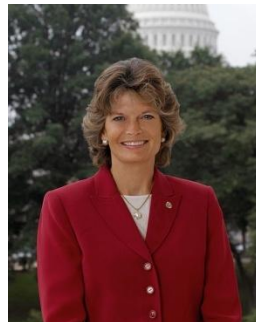
Key Committees

Energy & Natural Resources Committee



Chairman

Senator Jeff
Bingaman
(D-NM)



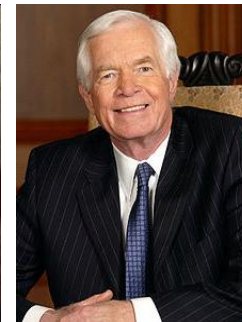
Ranking
Member

Senator Lisa
Murkowski
(R-AK)



Chairman

Senator
Daniel Inouye
(D-HI)



Ranking
Member

Senator
Thad Cochran
(R-MS)



Chairman

Senator
Max Baucus
(D-MT)



Ranking
Member

Senator
Orrin Hatch
(R-UT)

Appropriations Committee

Finance Committee

Impact of Republican Gains

- Energy
- Trade
- Taxes

2012 Presidential Election

- Will impact the 112th Congress legislative agenda?
- Will it effect policy decisions?
- Will it create uncertainty in the legislative process?
- What action will Congress take in 2012?

Energy Legislation and Policy

- In the 112th Congress energy legislation, while still increasing incentives for renewable energy production and conservation, is also focused on outer Continental shelf leases and liability for spills
- Over 20 House Bills
- Over 11 Senate Bills
- How many bills will be passed or enacted into law?

2011 House Efforts

H.R.49 American Energy Independence and Price Reduction Act

Directs the Secretary of the Interior to implement a competitive leasing program for the exploration, development and production of oil and natural gas resources on the Coastal Plain of Alaska

- Repeals prohibition against leasing and other development leading to the production of oil from ANWR

2/10/2011 Referred to Subcommittee on Energy and Environment

2011 House Efforts

H.R.52 Oil Pollution Environmental Review Act

Requires head of any federal agency to treat issuance of exploration development or production plans and lease sales as a major federal action affecting the quality of the human environment for purposes of NEPA

- Thereby requiring detailed environmental analysis of proposed actions
- Repeals requirement that Secretary of the Interior approve plans for geologic or geophysical exploration in the outer Continental shelf within thirty days

2/10/2011 Referred to Subcommittee on Energy and Environment

2011 House Efforts

H.R.53

Amends the Internal Revenue Code to deny a tax deduction for the removal costs and damages assessed for a discharge of oil under the Oil Pollution Act of 1990

1/5/2011 Referred to Committee on Ways and Means

2011 House Efforts

H.R.54 Stand By Your Pollution Act

Amends the Oil Pollution Act of 1990 to:

- extend liability to any corporation, partnership, or other person (other than an individual) having an ownership interest exceeding 25% in any responsible party;
- limit such an entity's liability with respect to an incident to no more than the percentage of the entity's aggregate ownership interests in all other responsible parties with respect to such incident

1/6/2011 Referred to Subcommittee on Coast Guard and Maritime Transportation

2011 House Efforts

H.R. 142 National Strategic Gasoline Reserve for Purposes of National Security Act of 2011

- Directs the Secretary of Energy to establish a Strategic Gasoline Reserve system with a total capacity of 10 million barrels of regular unleaded gasoline

2/1/2011 Referred to House Subcommittee on Energy and Power

2011 House Efforts

H.R.230 21st Century Energy Independence Act 2011

- Instructs the Secretary of Energy to seek to ensure the availability of 200% of the volume of renewable fuels required to be available in the United States by 2013 under the Energy Policy Act of 2005; and the reduction of carbon dioxide emissions from the production and use of renewable fuels by 25%.
- Directs the Secretary to establish a loan guarantee program for 80% of costs of an ethanol, biomass syngas liquid fuels technology project
- Authorizes grants for commercialization of ethanol production technologies

2/10/2011 Referred to Subcommittee on Energy and Environment

2011 House Efforts

H.R.261 No New Drilling Act of 2011

- Amends the Outer Continental Shelf Lands Act to prohibit the issuance of any lease for the exploration, development, or production of oil, gas, or any other mineral on the outer Continental Shelf.

1/26/2011 Referred to the Subcommittee on Energy and Mineral Resources

2011 House Efforts

H.R.372

- Amends the Outer Continental Shelf Lands Act to authorize the Secretary of the Interior to deny leases and permits to persons who engage in activities with the government of any foreign country that is subject to any sanction or an embargo established by the Government of the United States .

1/26/2011 Referred to the Subcommittee on Energy and Mineral Resources

2011 House Efforts

H.R.492 Big Oil Bailout Prevention Act of 2011

- Amends the Oil Pollution Act of 1990 to remove the limit on liability (currently, the total of all removal costs plus \$ 75,000,000) of a party responsible for an offshore facility except a deepwater port, from which oil is discharged into or upon navigable waters or adjoining shorelines

1/27/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Coast Guard and Maritime Transportation

2011 House Efforts

H.R.501 Implementing the Recommendations of the BP Oil Spill Commission Act of 2011

- Seeks to codify the recommendations of the President's Commission on the Deepwater Horizon Disaster
- Removes liability cap for spills

2/25/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Workforce Protections

2011 House Efforts

H.R.503 Offshore Oil and Gas Worker Whistleblower Protection Act of 2011

- Provides whistleblower protections to certain workers in the offshore oil and gas industry

2/25/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Workforce Protections



2011 House Efforts

H.R.601 End Big Oil Tax Subsidies Act of 2011

Amends the IRC to require seven-year amortization of the geological and geophysical expenditures of covered large oil companies and repeals for non-small, independent oil and gas companies:

- credits for marginal well production and enhanced oil recovery
- expensing intangible drilling and development costs of gas and geothermal wells
- percentage depletion and exemptions from limitations on passive activity losses
- the tax deduction for income attributable to domestic production activities and the use of (LIFO) accounting

2/10/2011 Referred to House committee. Status: Referred to the House Committee on Ways and Means.

2011 House Efforts

H.R.851 Clean Energy Jobs Act of 2011

- Amends the Internal Revenue Code of 1986 to extend certain renewable fuel tax incentives and to repeal fossil fuel subsidies for large oil companies
- Extends incentives and credits for biodiesel and renewable diesel, alcohol for use as fuel, and duties on ethanol
- Prevents taxpayers who are not a “small, independent oil and gas company” from benefiting from IRC provisions pertaining to percentage depletion, intangible drilling and development costs, enhanced oil recovery credit, production from marginal wells, amortization of geological and physical expenditures, limits passive activity losses and credits

3/1/2011 Referred to House committee. Status: Referred to the House Committee on Ways and Means

2011 House Efforts

H.R.903 Maximize Offshore Resource Exploration Act of 2011

- Terminates prohibitions on expenditures for, and withdrawals from, offshore oil and gas leasing
- Amends Outer Continental Shelf Lands Act to prohibit issuance of leases authorizing exploration unless state within 25 miles has enacted a law approving such leases
- Sets forth percentages for the distribution of funds from leases to the federal government (general treasury and a new “renewable energy reserve”) and to relevant states

3/7/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Energy and Mineral Resources

2011 House Efforts

H.R.909 A Roadmap for America's Energy Future

- Approves OCS Oil and Gas Leasing Programs and provides for the conduct of lease sales and cooperation with adjacent states
- Directs Secretary of Interior to establish competitive oil and gas leasing program in Alaska Coastal Plain and repeals section 1003 of Alaska National Interest Lands Conservation Act
- Directs the Secretary of Defense to develop and construct a coal-to-liquid facility
- Provisions for the handling of radioactive waste
- Prohibits the regulation of greenhouse gases under the Clean Air Act and consideration of impact of GHGs under Endangered Species Act

3/16/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Strategic Forces

2011 House Efforts

H.R.927 United States Exploration on Idle Tracts Act “USE IT” ACT

- Directs the Secretary of the Interior to establish an annual production incentive fee with respect to Federal onshore and offshore lands that are subject to a lease for production of oil or natural gas under which production is not occurring, and for other purposes

3/8/2011 Referred to the Subcommittee on Energy and Mineral Resources

2011 House Efforts

H.R.939 Offshore Lease Fairness Act of 2011

- Provides for the disposition of revenues from new offshore leases, with 50% going to coastal states.

3/10/2011 Referred to House subcommittee. Status: Referred to the Subcommittee on Energy and Mineral Resources

2011 House Efforts

***H.R.993 Lease Extension and Secure Energy Act of 2011**

- Extends outer Continental Shelf leases to accommodate permitting delays and to provide operators time to meet new drilling and safety requirements

***Senate Companion: S.516**

3/11/2011 Referred to Subcommittee on Energy and Mineral Resources

2011 House Efforts

H.R.1032 RELIEF Act

- Establishes judicial procedures for causes and claims relating to any action or decision by a Federal official regarding the leasing of Federal lands (including submerged lands) for the exploration, development, production, processing, or transmission of oil, natural gas, or any other source or form of energy, and for other purposes

3/11/2011 Referred to the House Committee on the Judiciary

2011 SENATE EFFORTS

2011 Senate Efforts

S.183 Deepwater Horizon Survivors' Fairness Act

- Amends several acts to eliminate liability limits and/or permit civil actions for deaths resulting from the Deepwater Horizon incident

1/25/2011 Read twice and referred to the Committee on Commerce, Science, and Transportation

2011 Senate Efforts

S.214 Big Oil Bailout Prevention Unlimited Liability Act of 2011

- Amends the Oil Pollution Act of 1990 to make the party responsible for an offshore facility, except a deepwater port, from which oil is discharged into or upon navigable waters or adjoining shorelines liable for all discharge removal costs and damages for each incident (under current law such party is liable for the total of all removal costs plus \$75 million .
- Makes this Act effective on April 15, 2010

1/27/2011 Read twice and referred to the Committee on Environment and Public Works

2011 Senate Efforts

S.258 Close Big Oil Tax Loopholes Act

- Amends the Internal Revenue Code to deny to taxpayers with gross revenues in excess of \$100 million in a taxable year (applicable large taxpayers):
 - the tax deduction for intangible drilling and development costs and qualified tertiary injectant expenses, and for income attributable to domestic production of oil, natural gas, or primary products thereof
 - the exemption from restrictions on the deductibility of passive losses
 - the percentage depletion allowance for oil and gas wells,
 - Makes this Act effective on April 15, 2010

Continued on next slide

2011 Senate Efforts

S.258 Close Big Oil Tax Loopholes Act (continued)

- Requires applicable large taxpayers to amortize their geological and geophysical expenditures over a seven-year period
- Imposes on producers of taxable crude oil or natural gas a 13% excise tax on the removal price of such oil and natural gas produced from lands on the Outer Continental Shelf in the Gulf of Mexico. Allows a nonrefundable credit against such tax for royalties paid under federal law with respect to the production of such crude oil and natural gas.
- Denies a foreign tax credit to any large integrated oil company that is subject to a levy of a foreign country or possession of the United States and receives an economic benefit from such country or possession (dual capacity taxpayer) if such country or possession does not impose a generally applicable income tax.

2/2/2011 Read twice and referred to the Committee on Finance

2011 Senate Efforts

S.338 Deepwater Drilling Royalty Relief Prohibition Act

- Prohibits the Secretary of the Interior from issuing any oil or gas lease sale under the Outer Continental Shelf Lands Act with royalty-based incentives in any tract located in water depths of 400 meters or more on the outer Continental Shelf .

2/14/2011 Read twice and referred to the Committee on Energy and Natural Resources

2011 Senate Efforts

S.351 No Surface Occupancy Western Arctic Coastal Plain Domestic Energy Security Act

- Authorizes the exploration, leasing, development, and production of oil and gas in and from the western portion of the Coastal Plain of the State of Alaska without surface occupancy, and for other purposes .

2/15/2011 Referred to Senate committee. Status: Read twice and referred to the Committee on Energy and Natural Resources

2011 Senate Efforts

S.352 : American Energy Independence and Security Act of 2011

- Provides for a leasing program for land within the coastal plain of Alaska.

2/15/2011 Referred to Senate committee. Status: Read twice and referred to the Committee on Energy and Natural Resources

2011 Senate Efforts

S.352 : No Oil Producing and Exporting Cartels Act of 2011 (NOPEC)

- Amends the Sherman Act to declare it to be illegal and a violation of the Act for any foreign state or instrumentality thereof to act collectively or in combination with any other state or person, to limit the production or distribution of oil, natural gas, or any other petroleum product (petroleum), to set or maintain the price of petroleum, or to otherwise take any action in restraint of trade for petroleum, when such action has a direct, substantial, and reasonably foreseeable effect on the market, supply, price, or distribution of petroleum in the United States.

2/17/2011 Read twice and referred to the Committee on the Judiciary.

2011 Senate Efforts

S.552 : Emergency Deficit Reduction Act

- Seeks repeal of expensing and amortization of intangible drilling costs, percentage depletion for oil and gas wells and denial of deductions for income attributable to domestic production of oil, gas or products thereof

3/10/2011 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance

2011 Pending Trade Issues

Customs Reauthorization

Free Trade Pacts with Korea, Colombia and Panama

Generalized System of Preferences, Andean Trade Preference Act and Trade Adjustment Assistance Reauthorization

Customs Reauthorization

Customs Reauthorization

- It is our understanding that the relevant committees are using the Customs reauthorization bill introduced last Congress and hope to have a discussion draft prepared and released in the near future
- Drawback simplification
- Timing of introduction in the House and the Senate; who's up first?
- Is it a priority for Ways and Means and Senate Finance?

Free Trade Agreements: Really?

General Issues

- Republicans want all three trade pacts to move together and both Republicans and Democrats appear to view the completion of FTAs as critical to bipartisan cooperation on the other 112th Congress trade issues
- It is generally deemed difficult, though not impossible, to pass controversial trade agreements in a presidential election year
- The Administration's focus is on enforcement provisions and implementing regulations to “adequately” protect the free trade goals of the agreement

Free Trade Agreements

Korea – U.S. Free Trade Agreement

- Largest of the three pending agreements and is expected to increase exports by \$10 billion; more than ten times greater than the Colombia and Panama FTAs combined. Also expected to produce some 192,000 jobs
- Much further along than the other pending FTAs and enjoys a good deal of bipartisan support.

Free Trade Agreements

Colombia – U.S. Free Trade Agreement

- Currently lacking significant bipartisan support
- Democratic concerns: Colombia legal framework not sufficient to protect workers and union oppression continues
- Textile foreign issues nearly resolved

Free Trade Agreements

Panama – U.S. Free Trade Agreement

- Considered to be further along than the Colombia FTA, as Panama has completed most of the work the U.S. has asked of it, including the conclusion of tax information agreements with the United State as well as other countries and the enactment of changes to its labor laws.
- Possible deal reached on labor issues

GSP, ATPA, TAA

General Issues

- Some Republicans are concerned about reauthorization of TAA without the existence of further market liberalization, or the conclusion of the pending FTAs. Some people on the hill believe that unless there is movement on the FTAs, it is unlikely that these other issues will be addressed.
- Bills, such as S.308 Trade Extenders Act of 2011, have been introduced to extend these provisions.

The President's FY2012 Budget Proposal

- Proposal to repeal tax breaks intended to spur oil and gas exploration., that, according to the Administration, over 10 years would raise:
 - \$12.4 billion through a repeal of expensing of intangible drilling costs
 - \$18.3 billion by repealing the domestic manufacturing (production) tax deduction (Sec.199) for oil and natural gas companies
 - \$11.2 billion through the repeal of percentage depletion for oil and natural gas wells
 - \$1.4 billion by increasing the geologic and geophysical amortization period for independent producers to seven years
 - \$200 million by repeal the exception to passive loss limitations for working interests in oil and natural gas properties
 - \$92 million through a repeal of a deduction for tertiary injectants

The President's FY2012 Budget Proposal

- Other specific oil and gas provisions would:
 - Repeal Enhanced Oil Recovery Credit
 - Repeal Credit For Oil and Gas Produced From Marginal Wells
- Measures not directed at the oil and gas industry, but having significant impact:
 - Repeal of last-in-first-out (LIFO) inventory accounting at a cost to our industry of approximately \$22.5 billion
 - Reinstatement of superfund taxes, which would result in a \$10.5 billion impact on oil and gas producers.

2011 Oil Industry Tax Issues

- Section 199
- Foreign Tax Credit Limitations
- Passive Loss Exception
- Marginal Well Credit
- LIFO
- Intangible Drilling Costs
- Geological & Geophysical Costs
- Percentage Depletion
- Superfund Tax

Question & Answer Session

Contact Information

Marc C. Hebert

Partner, Jones Walker

201 St. Charles Avenue

New Orleans, LA 70170-5100

504.582.8506 *tel*

504.589.8506 *fax*

mhebert@joneswalker.com

Michael K. McDonald

Special Counsel, Jones Walker

499 South Capitol Street, SW

Washington, D.C. 20003-4013

202.203.1084 *tel*

202.203.0000 *fax*

mkmcDonald@joneswalker.com