

USE OF SAND, GRAVEL, AND SHELLS OF OUTER  
CONTINENTAL SHELF

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OCTOBER 2, 1998.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

R E P O R T

[To accompany H.R. 3972]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3972) to amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging State and local government agencies for certain uses of the sand, gravel, and shell resources of the outer Continental Shelf, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3972 is to amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging State and local government agencies for certain uses of the sand, gravel and shell resources of the Outer Continental Shelf.

BACKGROUND AND NEED FOR LEGISLATION

Public Law 103-426 amended the Outer Continental Shelf Lands Act regarding the disposition of sand, gravel, and shell resources from the outer continental shelf (OCS). This amendment was prompted by the need for such materials for beach replenishment projects to fight coastal erosion as closer in sources of sand (within State waters or onshore) become exhausted or lacking proper physical characteristics. The Padre Island National Seashore off the Texas Gulf of Mexico coast was an example of such immediate need. Because the federal government (National Park Service) manages this barrier island, the Secretary of the Interior made the

OCS sand available for disposition without charge to the agency. However, Public Law 103-426 did not specifically provide for “fee-less” resources for state and local government projects of a like nature.

The OCSLA mandates the Secretary receive fair value in return for the rights to federal resources on the OCS. A negotiation process which the Department of the Interior’s Minerals Management Service implemented post-Public Law 103-426 provides that the fees for OCS sand resources for public projects will be reduced—but not eliminated altogether—to reflect the fraction of federal interest in a beach replenishment or other public project. Disposition of sand, gravel and shell resources to non-governmental entities remains subject to full payment of fair market value.

Beach erosion on the Atlantic coast remains significant, particularly after nor’easter storms such as the two which pounded the Delmarva and Virginia/North Carolina coastline during the past winter. Congressman Owen Pickett introduced H.R. 3972 after the City of Virginia Beach went through the negotiated fee process for OCS sand needed to replenish the beach in the Sandbridge, Virginia, area. Because the need for the replenishment was immediate, the City agreed to pay approximately \$200,000 to the Minerals Management Service for the OCS sand in order to begin dredging last May. The total cost of the nourishment project is approximately \$8 million, so the OCS sand fee is less than 2 percent of project costs. The far larger question for state and local governments is the availability of funds for U.S. Army Corps of Engineers-authorized projects for dredging work and placement of the sand on the beach, but such authorization and funding falls outside of Resources Committee jurisdiction.

H.R. 3972 simply amends Public Law 103-426 to the OCSLA to put state and local government agencies in the same category as federal agencies, i.e., able to receive these resources without cost for public projects. By way of comparison, disposition of sand and gravel resources from onshore public lands is made under the Material Sales Act of 1947 [30 U.S.C. 601 et seq.] which states: “any Federal, State or Territorial agency, unit or subdivision including municipalities, or any association or corporation not organized for profit, to take and remove without charge, materials and resources subject to this subchapter, for uses other than for commercial or industrial purposes or resale.” [Act of July 31, 1947, c. 406, section 1, 61 Stat. 681].

Furthermore, because of the dynamics of geologic processes (erosion and sedimentation) operating on our shorelines, the Committee views beach nourishment projects which use sand resources derived from shoals on the OCS more as a “rental” of these mineral materials than a “sale.” In other words, sand, gravel and shell resources disposed under the OCSLA will no doubt be returned to the OCS sometime in the future by ongoing beach erosional processes. Nevertheless, the Committee supports the relatively short-term “loan” of this sand resource without charge to governmental entities for beach nourishment (or other public projects) which have demonstrated positive cost-benefit analyses, in the same manner as the 103rd Congress supported such disposition and use by the federal government.

## COMMITTEE ACTION

H.R. 3972 was introduced on May 22, 1998, by Congressman Owen Pickett (D-VA). The bill was subsequently cosponsored by Congressmen Charles Schumer (D-NY), Michael Castle (R-DE), Brian Bilbray (R-CA), and Michael Pappas (R-NJ) and Congresswomen Tillie Fowler (R-FL) and Carrie Meek (D-FL). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On July 21, 1998, the Subcommittee held a hearing on H.R. 3972, where Mr. Pickett testified on behalf of his legislation. Ms. Meyera Oberndorf, Mayor of the City of Virginia Beach, Virginia, testified as to the need for prospective relief to state and local governments for beach nourishment-type projects, and related the history of negotiations with the Minerals Management Service over the Sandbridge beach replenishment project. Ms. Carol Hartgen, Chief of the International Activities and Marine Minerals Division of the Minerals Management Service, testified on behalf of the Administration. She described the negotiated-fee process by which the Minerals Management Service currently calculates the fee to be charged for non-federal government agencies today. The Administration objects to H.R. 3972 and believes state and local governments receive fair treatment under current rules. Ms. Hartgen further testified the Secretary of the Interior believes that should H.R. 3972 become law, so-called cost recovery principles would deem it necessary to charge a fee to state and local governments seeking OCS sand, gravel or shell resources commensurate with federal administrative costs associated with data collection and analysis attributable to the non-federal portion of any particular beach nourishment project.

On August 5, 1998, the Committee on Resources met to consider H.R. 3972. The Subcommittee on Energy and Mineral Resources was discharged from further consideration of the bill by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

## SECTION-BY-SECTION ANALYSIS

Section 1 of H.R. 3972 amends section 8(k)(2)(B) of the Outer Continental Shelf Lands Act by striking the phrase "an agency of the Federal Government" and substituting "a Federal, State or local government agency" to have all levels of government treated equally regarding payment for OCS sand, gravel and shell resources.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact H.R. 3972.

## COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3972. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

## COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3972 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of H.R. 3972 would result in a loss of offsetting receipts of less than \$500,000 annually.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 3972.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3972 from the Director of the Congressional Budget Office.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 17, 1998.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3972, a bill to amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging state and local government agencies for certain uses of the sand, gravel, and shell resources of the outer continental shelf.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs) and Leo Lex (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 3972—A bill to amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging state and local government agencies for certain uses of the sand, gravel, and shell resources of the outer continental shelf*

H.R. 3972 would amend the Outer Continental Shelf Lands Act to allow state and local government agencies to negotiate agreements with the Department of the Interior (DOI) to use sand, gravel, and shell resources from the outer continental shelf (OCS) for shore and beach restoration programs and other federally authorized construction projects without charge. Under current law, DOI cannot charge federal agencies for the use of these offshore resources, and the bill would extend free use of these resources to state and local governments. CBO estimates that enacting H.R. 3972 would result in the loss of offsetting receipts to the federal government of less than \$500,000 annually. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Based on information from DOI, CBO estimates that future annual receipts from state and local governments using sand, gravel, and shell resources from the federally controlled OCS would be small, ranging from nothing to a few hundred thousand dollars a year. Most projects to replenish beach sand use dredged material from nearby state submerged lands rather than the OCS; however, there is increasing interest in this resource. Proceeds from the sale of this material are recorded as offsetting receipts to the Treasury; thus a loss of these receipts would increase direct spending. Because the bill would affect direct spending, pay-as-you-go procedures would apply, but the amounts involved would not be significant. By exempting state and local governments from fees that would otherwise be charged for sand, gravel, and shell resources, the bill would result in some small savings to state and local governments.

The CBO staff contacts are Kim Cawley (for federal costs) and Leo Lex (for the state and local impact). This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 3972 contains no unfunded mandates.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 8 OF THE OUTER CONTINENTAL SHELF LANDS  
ACT**

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—(a) \* \* \*

\* \* \* \* \*

(k)(1) \* \* \*

(2)(A) \* \* \*

(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against **[an agency of the Federal Government]** *a Federal, State, or local government agency.*

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