

112TH CONGRESS
1ST SESSION

S. 351

To authorize 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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2011

Ms. MURKOWSKI (for herself and Mr. BEGICH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Surface Occupancy
5 Western Arctic Coastal Plain Domestic Energy Security
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COASTAL PLAIN.—The term “Coastal
2 Plain” means the area identified as the “1002
3 Coastal Plain Area” on the map.

4 (2) FINAL STATEMENT.—The term “Final
5 Statement” means the final legislative environmental
6 impact statement on the Coastal Plain, dated April
7 1987, and prepared pursuant to—

8 (A) section 1002 of the Alaska National
9 Interest Lands Conservation Act (16 U.S.C.
10 3142); and

11 (B) section 102(2)(C) of the National En-
12 vironmental Policy Act of 1969 (42 U.S.C.
13 4332(2)(C)).

14 (3) MAP.—The term “map” means the map en-
15 titled “Arctic National Wildlife Refuge”, dated Sep-
16 tember 2005, and prepared by the United States Ge-
17 ological Survey.

18 (4) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior (or the designee of the
20 Secretary), acting through the Director of the Bu-
21 reau of Land Management, in consultation with the
22 Director of the United States Fish and Wildlife
23 Service and in coordination with a State coordinator
24 appointed by the Governor of the State of Alaska.

1 (5) WESTERN COASTAL PLAIN.—The term
2 “Western Coastal Plain” means that area of the
3 Coastal Plain—

4 (A) that borders the land of the State of
5 Alaska to the west and State of Alaska offshore
6 waters of the Beaufort Sea on the north; and

7 (B) from which the Secretary, in the sole
8 discretion of the Secretary, finds oil and gas
9 can be produced through the use of horizontal
10 drilling or other subsurface technology from
11 sites outside or underneath the surface of the
12 Coastal Plain.

13 **SEC. 3. LEASING PROGRAM FOR LAND WITHIN THE WEST-**
14 **ERN COASTAL PLAIN.**

15 (a) IN GENERAL.—

16 (1) AUTHORIZATION.—There is authorized the
17 exploration, leasing, development, and production of
18 oil and gas from the Western Coastal Plain.

19 (2) ACTIONS.—The Secretary shall take such
20 actions as are necessary—

21 (A) to establish and implement, in accord-
22 ance with this Act, a competitive oil and gas
23 leasing program that will result in an environ-
24 mentally sound program for the exploration, de-

1 development, and production of the oil and gas re-
2 sources of the Western Coastal Plain; and

3 (B) to administer this Act through regula-
4 tions, lease terms, conditions, restrictions, pro-
5 hibitions, stipulations, and other provisions
6 that—

7 (i) ensure the oil and gas exploration,
8 development, and production activities on
9 the Western Coastal Plain will result in no
10 significant adverse effect on fish and wild-
11 life, fish and wildlife habitat, subsistence
12 resources, and the environment;

13 (ii) prohibit surface occupancy of the
14 Western Coastal Plain during oil and gas
15 development and production; and

16 (iii) require the application of the best
17 commercially available technology for oil
18 and gas exploration, development, and pro-
19 duction to all exploration, development,
20 and production operations under this Act
21 in a manner that ensures the receipt of
22 fair market value by the public for the
23 mineral resources to be leased.

24 (b) COMPLIANCE WITH REQUIREMENTS UNDER
25 CERTAIN OTHER LAWS.—

1 (1) COMPATIBILITY.—For purposes of the Na-
2 tional Wildlife Refuge System Administration Act of
3 1966 (16 U.S.C. 668dd et seq.)—

4 (A) the oil and gas leasing program and
5 activities authorized by this section in the West-
6 ern Coastal Plain shall be considered to be com-
7 patible with the purposes for which the Arctic
8 National Wildlife Refuge was established; and

9 (B) no further findings or decisions shall
10 be required to implement that program and
11 those activities.

12 (2) ADEQUACY OF DOI LEGISLATIVE ENVIRON-
13 MENTAL IMPACT STATEMENT.—The Final State-
14 ment shall be considered to satisfy the requirements
15 of the National Environmental Policy Act of 1969
16 (42 U.S.C. 4321 et seq.) that apply with respect to
17 prelease activities, including actions authorized to be
18 taken by the Secretary to develop and promulgate
19 the regulations for the establishment of a leasing
20 program authorized by this Act before the conduct
21 of the first lease sale.

22 (c) RELATIONSHIP TO STATE AND LOCAL AUTHOR-
23 ITY.—Nothing in this Act expands or limits any State or
24 local regulatory authority.

25 (d) REGULATIONS.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Secretary
3 shall promulgate such regulations as are necessary
4 to carry out this Act.

5 (2) REVISION OF REGULATIONS.—The Sec-
6 retary shall periodically review and, as appropriate,
7 revise the rules and regulations promulgated under
8 paragraph (1) to reflect any significant biological,
9 environmental, or engineering data that come to the
10 attention of the Secretary.

11 **SEC. 4. LEASE SALES.**

12 (a) QUALIFIED LESSEES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), land may be leased under this Act to any
15 person qualified to obtain a lease for deposits of oil
16 and gas under the Mineral Leasing Act (30 U.S.C.
17 181 et seq.).

18 (2) EXCLUSION.—Land may not be leased
19 under this Act to any person prohibited from partici-
20 pation in a lease sale under section 1002(e)(2)(C) of
21 the Alaska National Interest Lands Conservation
22 Act (16 U.S.C. 3142(e)(2)(C)).

23 (b) PROCEDURES.—The Secretary shall, by regula-
24 tion, establish procedures for—

1 (1) receipt and consideration of sealed nomina-
2 tions for any area in the Western Coastal Plain for
3 inclusion in, or exclusion from, a lease sale;

4 (2) the holding of lease sales after the nomina-
5 tion process described in paragraph (1); and

6 (3) public notice of, and comment on, designa-
7 tion of areas to be included in, or excluded from, a
8 lease sale.

9 (c) LEASE SALE BIDS.—Bidding for leases under
10 this Act shall be by sealed competitive cash bonus bids.

11 (d) ACREAGE MINIMUM IN FIRST SALE.—For the
12 first lease sale under this Act, the Secretary shall offer
13 for lease those tracts the Secretary considers to have the
14 greatest potential for the discovery of hydrocarbons, tak-
15 ing into consideration nominations received pursuant to
16 subsection (b)(1), but in no case less than 200,000 acres.

17 (e) TIMING OF LEASE SALES.—The Secretary
18 shall—

19 (1) not later than 18 months after the date of
20 enactment of this Act, conduct the first lease sale
21 under this Act;

22 (2) not later than 2 years after the first lease
23 sale, conduct a second lease sale under this Act; and

24 (3) conduct additional sales at appropriate in-
25 tervals if, as determined by the Secretary, sufficient

1 interest in development exists to warrant the con-
2 duct of the additional sales.

3 **SEC. 5. GRANT OF LEASES BY THE SECRETARY.**

4 (a) IN GENERAL.—On payment by a lessee of such
5 bonus as may be accepted by the Secretary, the Secretary
6 may grant to the highest responsible qualified bidder in
7 a lease sale conducted pursuant to section 4 a lease for
8 any land on the Western Coastal Plain.

9 (b) SUBSEQUENT TRANSFERS.—

10 (1) IN GENERAL.—No lease issued under this
11 Act may be sold, exchanged, assigned, sublet, or oth-
12 erwise transferred except with the approval of the
13 Secretary.

14 (2) CONDITION FOR APPROVAL.—Before grant-
15 ing any approval under paragraph (1), the Secretary
16 shall consult with, and give due consideration to the
17 opinion of, the Attorney General.

18 **SEC. 6. LEASE TERMS AND CONDITIONS.**

19 (a) IN GENERAL.—An oil or gas lease issued pursu-
20 ant to this Act shall—

21 (1) provide for the payment of a royalty of not
22 less than 12½ percent of the quantity or value of
23 the production removed or sold from the lease, as
24 determined by the Secretary in accordance with reg-

1 ulations applicable to other Federal oil and gas
2 leases;

3 (2) provide that the Secretary may close, on a
4 seasonal basis, such portions of the Western Coastal
5 Plain to exploratory drilling activities as are nec-
6 essary to protect caribou calving areas and other
7 species of fish and wildlife;

8 (3) require that each lessee of land within the
9 Western Coastal Plain shall be fully responsible and
10 liable for the reclamation of land within the Western
11 Coastal Plain and any other Federal land that is ad-
12 versely affected in connection with exploration activi-
13 ties conducted under the lease and within the West-
14 ern Coastal Plain by the lessee or by any of the sub-
15 contractors or agents of the lessee;

16 (4) provide that the lessee may not delegate or
17 convey, by contract or otherwise, the reclamation re-
18 sponsibility and liability described in paragraph (3)
19 to another person without the express written ap-
20 proval of the Secretary;

21 (5) contain terms and conditions relating to
22 protection of fish and wildlife, fish and wildlife habi-
23 tat, subsistence resources, and the environment as
24 required under section 3(a)(2);

1 (6) provide that each lessee, and each agent
2 and contractor of a lessee, shall use the best efforts
3 of the lessee to provide a fair share of employment
4 and contracting for Alaska Natives and Alaska Na-
5 tive Corporations from throughout the State, as de-
6 termined by the level of obligation previously agreed
7 to in the Federal Agreement; and

8 (7) contain such other provisions as the Sec-
9 retary determines to be necessary to ensure compli-
10 ance with this Act, including regulations promul-
11 gated under this Act.

12 (b) PROJECT LABOR AGREEMENTS.—The Secretary,
13 as a term and condition of each lease under this Act, and
14 in recognizing the proprietary interest of the Federal Gov-
15 ernment in labor stability and in the ability of construction
16 labor and management to meet the particular needs and
17 conditions of projects to be developed under the leases
18 issued pursuant to this Act (including the special concerns
19 of the parties to those leases), shall require that each les-
20 see, and each agent and contractor of a lessee, under this
21 Act negotiate to obtain a project labor agreement for the
22 employment of laborers and mechanics on production,
23 maintenance, and construction under the lease.

24 **SEC. 7. EXPEDITED JUDICIAL REVIEW.**

25 (a) FILING OF COMPLAINTS.—

1 (1) DEADLINE.—A complaint seeking judicial
2 review of a provision of this Act or an action of the
3 Secretary under this Act shall be filed—

4 (A) except as provided in subparagraph
5 (B), during the 90-day period beginning on the
6 date on which the action being challenged was
7 carried out; or

8 (B) in the case of a complaint based solely
9 on grounds arising after the 90-day period de-
10 scribed in subparagraph (A), by not later than
11 90 days after the date on which the complain-
12 ant knew or reasonably should have known
13 about the grounds for the complaint.

14 (2) VENUE.—A complaint seeking judicial re-
15 view of a provision of this Act or an action of the
16 Secretary under this Act shall be filed in the United
17 States Court of Appeals for the District of Columbia
18 Circuit.

19 (3) SCOPE.—

20 (A) IN GENERAL.—Judicial review of a de-
21 cision of the Secretary relating to a lease sale
22 under this Act (including an environmental
23 analysis of such a lease sale) shall be—

24 (i) limited to a review of whether the
25 decision is in accordance with this Act; and

1 (ii) based on the administrative record
2 of the decision.

3 (B) PRESUMPTIONS.—Any identification
4 by the Secretary of a preferred course of action
5 relating to a lease sale, and any analysis by the
6 Secretary of environmental effects, under this
7 Act shall be presumed to be correct unless prov-
8 en otherwise by clear and convincing evidence.

9 (b) LIMITATION ON OTHER REVIEW.—Any action of
10 the Secretary that is subject to judicial review under this
11 section shall not be subject to judicial review in any civil
12 or criminal proceeding for enforcement.

13 **SEC. 8. LOCAL GOVERNMENT IMPACT AID AND COMMU-**
14 **NITY SERVICE ASSISTANCE.**

15 (a) ESTABLISHMENT OF FUND.—

16 (1) IN GENERAL.—The Secretary shall establish
17 in the Treasury a fund to be known as the “Coastal
18 Plain Local Government Impact Aid Assistance
19 Fund” (referred to in this section as the “Fund”)
20 to offset any planning, land use-related, or service-
21 related impacts of offshore development caused by
22 this Act.

23 (2) DEPOSITS.—The Secretary of the Treasury
24 shall deposit into the Fund, \$15,000,000 each year
25 from the amount available under section 9(1).

1 (b) ASSISTANCE.—The Governor of Alaska, in co-
2 operation with the Mayor of the North Slope Borough,
3 shall use amounts in the Fund to provide assistance to
4 the North Slope Borough, Alaska, the City of Kaktovik,
5 Alaska, and any other borough, municipal subdivision, vil-
6 lage, or other community in the State of Alaska that is
7 directly impacted by exploration for, or the production of,
8 oil or gas on or near the Coastal Plain under this Act,
9 or any Alaska Native Regional Corporation acting on be-
10 half of the villages and communities within its region
11 whose land lies along the right of way of the Trans Alaska
12 Pipeline System, as determined by the Governor.

13 (c) APPLICATION.—

14 (1) IN GENERAL.—To receive assistance under
15 subsection (b), a community or Regional Corporation
16 described in that subsection shall submit to the Gov-
17 ernor, or to the Mayor of the North Slope Borough,
18 an application in such time, in such manner, and
19 containing such information as the Governor may re-
20 quire.

21 (2) ACTION BY NORTH SLOPE BOROUGH.—The
22 Mayor of the North Slope Borough shall submit to
23 the Governor each application received under para-
24 graph (1) as soon as practicable after the date on
25 which the application is received.

1 (3) ASSISTANCE OF GOVERNOR.—The Governor
2 shall assist communities in submitting applications
3 under this subsection to the maximum extent prac-
4 ticable.

5 (d) USE OF FUNDS.—A community or Regional Cor-
6 poration that receives funds under subsection (b) may use
7 the funds—

8 (1) to plan for mitigation, implement a mitiga-
9 tion plan, or maintain a mitigation project to ad-
10 dress the potential effects of oil and gas exploration
11 and development on environmental, social, cultural,
12 recreational, and subsistence resources of the com-
13 munity;

14 (2) to develop, carry out, and maintain—

15 (A) a project to provide new or expanded
16 public facilities; or

17 (B) services to address the needs and prob-
18 lems associated with the effects described in
19 paragraph (1), including firefighting, police,
20 water and waste treatment, first responder, res-
21 cue, and other medical services;

22 (3) to compensate residents of the Coastal
23 Plain or nearby waters for significant damage to en-
24 vironmental, social, cultural, recreation, or subsist-
25 ence resources; and

1 (4) in the City of Kaktovik, Alaska—

2 (A) to develop a mechanism for providing
3 members of the Kaktovikmiut Inupiat commu-
4 nity an opportunity—

5 (i) to monitor development in or near
6 the Coastal Plain; and

7 (ii) to provide information and rec-
8 ommendations based on traditional knowl-
9 edge; and

10 (B) to establish a local coordination office,
11 to be managed by the Mayor of the North Slope
12 Borough, in coordination with the City of
13 Kaktovik, Alaska—

14 (i) to coordinate with and advise de-
15 velopers on local conditions and the history
16 of areas affected by development;

17 (ii) to collect from residents of the
18 Coastal Plain information regarding the
19 impacts of development on fish, wildlife,
20 whales, other marine mammals, habitats,
21 subsistence resources, and the environment
22 of the Coastal Plain; and

23 (iii) to ensure that the information
24 collected under clause (ii) is submitted to
25 any appropriate Federal agency.

1 **SEC. 9. ALLOCATION OF REVENUES.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of law, of the amount of adjusted bonus, rental, and
4 royalty revenues from Federal oil and gas leasing and op-
5 erations authorized under this Act—

6 (1) 50 percent shall be paid semiannually to the
7 State of Alaska; and

8 (2) 50 percent shall be allocated in accordance
9 with subsection (b).

10 (b) ALLOCATION OF FEDERAL FUNDS.—Any
11 amounts made available under subsection (a)(2), plus an
12 appropriated amount equal to the amount of Federal in-
13 come tax attributable to sales of oil and gas produced from
14 operations described in subsection (a), shall be deposited
15 in an account in the Treasury which shall be available,
16 without further appropriation or fiscal year limitation,
17 each fiscal year as follows:

18 (1) \$15,000,000 shall be deposited by the Sec-
19 retary of the Treasury into the Fund created under
20 section 8(a)(1).

21 (2) The remainder shall be available as follows:

22 (A) Twenty-five percent shall be available
23 to the Department of Energy to carry out alter-
24 native energy programs established under the
25 Energy Policy Act of 2005 (42 U.S.C. 15801 et
26 seq.), the Energy Independence and Security

1 Act of 2007 (42 U.S.C. 17001 et seq.), or an
2 amendment made by either of those Acts, as de-
3 termined by the Secretary of Energy.

4 (B) Ten percent shall be available to the
5 Department of Health and Human Services to
6 provide low-income home energy assistance
7 under title XXVI of the Omnibus Budget Rec-
8 onciliation Act of 1981 (42 U.S.C. 8621 et
9 seq.).

10 (C) Ten percent shall be available to the
11 Department of Energy to carry out the Weath-
12 erization Assistance Program for Low-Income
13 Persons established under part A of title IV of
14 the Energy Conservation and Production Act
15 (42 U.S.C. 6861 et seq.).

16 (D) Ten percent shall be available to the
17 Department of the Interior for award to wildlife
18 habitat and fish and game programs authorized
19 by the Pittman-Robertson Wildlife Restoration
20 Act (16 U.S.C. 669 et seq.) and the Dingell-
21 Johnson Sport Fish Restoration Act) (com-
22 monly known as the “Wallop-Breaux Act”) (16
23 U.S.C. 777 et seq.).

1 (E) The balance shall be deposited into the
2 Treasury as miscellaneous receipts.

○