

109TH CONGRESS
1ST SESSION

S. 736

To amend the Outer Continental Shelf Lands Act to promote uses on the
Outer Continental Shelf.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2005

Mr. VITTER introduced the following bill; which was read twice and referred
to the Committee on Energy and Natural Resources

A BILL

To amend the Outer Continental Shelf Lands Act to promote
uses on the Outer Continental Shelf.

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 “Alternative Energy En-
5 hancement Act of 2005”.

6 **SEC. 2. ALTERNATE ENERGY-RELATED USES ON THE**
7 **OUTER CONTINENTAL SHELF.**

8 (a) IN GENERAL.—Section 8 of the Outer Conti-
9 nental Shelf Lands Act (43 U.S.C. 1337) is amended by
10 adding at the end the following:

1 “(p)(1) The Secretary, in consultation with the Sec-
2 retary of the Department in which the Coast Guard is op-
3 erating and other relevant departments and agencies of
4 the Federal Government, may grant a lease, easement,
5 right-of-way, license, or permit on the outer Continental
6 Shelf for activities not otherwise authorized under this
7 Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501
8 et seq.), the Ocean Thermal Energy Conversion Act of
9 1980 (42 U.S.C. 9101 et seq.), or other applicable law,
10 if those activities support or promote—

11 “(A) exploration, development, production,
12 transportation, or storage of oil, natural gas, or
13 other minerals;

14 “(B) production, transportation, or trans-
15 mission of energy from sources other than oil and
16 gas; or

17 “(C) use, for energy-related or marine-related
18 purposes, of facilities in use on or before the date of
19 enactment of this subsection for activities authorized
20 under this Act.

21 “(2)(A)(i) Subject to paragraph (3), the Secretary
22 shall establish reasonable forms of payment for any lease,
23 easement, right-of-way, license, or permit under this sub-
24 section, including a royalty, fee, rental, bonus, or other
25 payment, as the Secretary determines to be appropriate.

1 “(ii) The Secretary may establish a form of payment
2 described in clause (i) by rule or by agreement with the
3 holder of the lease, easement, right-of-way, license, or per-
4 mit.

5 “(B) In establishing a form of, or schedule relating
6 to, a payment under subparagraph (A), the Secretary shall
7 take into consideration the economic viability of a pro-
8 posed activity.

9 “(C) The Secretary may, by rule, provide for relief
10 from or reduction of a payment under subparagraph (A)—

11 “(i) if, without the relief or reduction, an activ-
12 ity relating to a lease, easement, right-of-way, li-
13 cense, or permit under this subsection would be un-
14 economical;

15 “(ii) to encourage a particular activity; or

16 “(iii) for another reason, as the Secretary de-
17 termines to be appropriate.

18 “(D) If the holder of a lease, easement, right-of-way,
19 license, or permit under this subsection fails to make a
20 payment by the date required under a rule or term of the
21 lease, easement, right-of-way, license, or permit, the Sec-
22 retary may require the holder to pay interest on the pay-
23 ment in accordance with the underpayment rate estab-
24 lished under section 6621(a)(2) of the Internal Revenue
25 Code of 1986, for the period—

1 “(i) beginning on the date on which the pay-
2 ment was due; and

3 “(ii) ending on the date on which the payment
4 is made.

5 “(E)(i) The Secretary may allow a credit in the
6 amount of any excess payment made by the holder of a
7 lease, easement, right-of-way, license, or permit under this
8 subsection or provide a refund in the amount of the excess
9 payment from the account to or in which the excess pay-
10 ment was paid or deposited.

11 “(ii) The Secretary shall pay, or allow the holder of
12 a lease, easement, right-of-way, license, or permit under
13 this subsection a credit in the amount of, any interest on
14 an amount refunded or credited under clause (i) in accord-
15 ance with the overpayment rate established under section
16 6621(a)(1) of the Internal Revenue Code of 1986, for the
17 period—

18 “(I) beginning on the date on which the Sec-
19 retary received the excess payment; and

20 “(II) ending on the date on which the refund or
21 credit is provided.

22 “(F)(i) The Secretary, in coordination with the Ad-
23 ministrators of the National Oceanic and Atmospheric Ad-
24 ministration, may establish reasonable forms of payment,
25 as determined by the Secretary, for a license issued under

1 the Ocean Thermal Energy Conversion Act of 1980 (42
2 U.S.C. 9101 et seq.), including a royalty, fee, rental,
3 bonus, or other payment, as the Secretary determines to
4 be appropriate, in addition to the administrative fee under
5 section 102(h) of that Act (42 U.S.C. 9112(h)).

6 “(ii) A form of payment under clause (i) may be es-
7 tablished by rule or by agreement with the holder of the
8 lease, easement, right-of-way, license, or permit.

9 “(3)(A) Any funds received by the Secretary from a
10 holder of a lease, easement, right-of-way, license, or permit
11 under this subsection shall be distributed in accordance
12 with this paragraph.

13 “(B)(i) If a lease, easement, right-of-way, license, or
14 permit under this subsection covers a specific tract of, or
15 regards a facility located on, the outer Continental Shelf
16 and is not an easement or right-of-way for transmission
17 or transportation of energy, minerals, or other natural re-
18 sources, the Secretary shall pay 50 percent of any amount
19 received from the holder of the lease, easement, right-of-
20 way, license, or permit to the State off the shore of which
21 the geographic center of the area covered by the lease,
22 easement, right-of-way, license, permit, or facility is lo-
23 cated, in accordance with Federal law determining the sea-
24 ward lateral boundaries of the coastal States.

1 “(ii) Not later than the last day of the month after
2 the month during which the Secretary receives a payment
3 from the holder of a lease, easement, right-of-way, license,
4 or permit described in clause (i), the Secretary shall make
5 payments in accordance with clause (i).

6 “(C)(i) The Secretary shall deposit 20 percent of the
7 funds described in subparagraph (A) to a special account
8 maintained and administered by the Secretary to provide
9 research and development grants for improving energy
10 technologies.

11 “(ii) An amount deposited under clause (i) shall re-
12 main available until expended, without further appropria-
13 tion.

14 “(D) The Secretary shall credit 5 percent of the
15 funds described in subparagraph (A) to the annual oper-
16 ating appropriation of the Minerals Management Service.

17 “(E) The Secretary shall deposit any funds described
18 in subparagraph (A) that are not deposited or credited
19 under subparagraphs (B) through (D) in the general fund
20 of the Treasury.

21 “(F) This paragraph does not apply to any amount
22 received by the Secretary under section 9701 of title 31,
23 United States Code, or any other law (including regula-
24 tions) under which the Secretary may recover the costs
25 of administering this subsection.

1 “(4) Before carrying out this subsection, the Sec-
2 retary shall consult with the Secretary of Defense and
3 other appropriate Federal agencies regarding the effect of
4 this subsection on national security and navigational ob-
5 struction.

6 “(5)(A) The Secretary may issue a lease, easement,
7 right-of-way, license, or permit under paragraph (1) on
8 a competitive or noncompetitive basis.

9 “(B) In determining whether a lease, easement right-
10 of-way, license, or permit shall be granted competitively
11 or noncompetitively, the Secretary shall consider factors
12 including—

13 “(i) prevention of waste and conservation of
14 natural resources;

15 “(ii) the economic viability of a project;

16 “(iii) protection of the environment;

17 “(iv) the national interest and national security;

18 “(v) human safety;

19 “(vi) protection of correlative rights; and

20 “(vii) the potential return of the lease, ease-
21 ment, right-of-way, license, or permit.

22 “(6) The Secretary, in consultation with the Sec-
23 retary of the Department in which the Coast Guard is op-
24 erating, other relevant Federal agencies, and affected
25 States, as the Secretary determines appropriate, shall pro-

1 mulgate any regulation the Secretary determines to be
2 necessary to administer this subsection to achieve the
3 goals of—

4 “(A) ensuring public safety;

5 “(B) protecting the environment;

6 “(C) preventing waste;

7 “(D) conserving the natural resources of, and
8 protecting correlative rights in, the outer Conti-
9 nental Shelf;

10 “(E) protecting national security interests;

11 “(F) auditing and reconciling payments made
12 and owed by each holder of a lease, easement, right-
13 of-way, license, or permit under this subsection to
14 ensure a correct accounting and collection of the
15 payments; and

16 “(G) requiring each holder of a lease, easement,
17 right-of-way, license, or permit under this subsection
18 to—

19 “(i) establish such records as the Secretary
20 determines to be necessary;

21 “(ii) retain all records relating to an activ-
22 ity under a lease, easement, right-of-way, li-
23 cense, or permit under this subsection for such
24 period as the Secretary may prescribe; and

1 “(iii) produce the records on receipt of a
2 request from the Secretary.

3 “(7) Section 22 shall apply to any activity relating
4 to a lease, easement, right-of-way, license, or permit under
5 this subsection.

6 “(8) The Secretary shall require the holder of a lease,
7 easement, right-of-way, license, or permit under this sub-
8 section to—

9 “(A) submit to the Secretary a surety bond or
10 other form of security, as determined by the Sec-
11 retary; and

12 “(B) comply with any other requirement the
13 Secretary determines to be necessary to protect the
14 interests of the United States.

15 “(9) Nothing in this subsection displaces, supersedes,
16 limits, or modifies the jurisdiction, responsibility, or au-
17 thority of any Federal or State agency under any other
18 Federal law.

19 “(10) This subsection does not apply to any area on
20 the outer Continental Shelf designated as a National Ma-
21 rine Sanctuary.”.

22 (b) CONFORMING AMENDMENT.—Section 8 of the
23 Outer Continental Shelf Lands Act (43 U.S.C. 1337) is
24 amended in the section heading by striking “**LEASING**”
25 and all that follows and inserting “**LEASES, EASE-**

1 **MENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTI-**
2 **NENTAL SHELF.”.**

3 (c) SAVINGS PROVISION.—Nothing in the amendment
4 made by subsection (a) requires any resubmission of docu-
5 ments previously submitted or any reauthorization of ac-
6 tions previously authorized with respect to any project—

7 (1) for which offshore test facilities have been
8 constructed before the date of enactment of this Act;
9 or

10 (2) for which a request for proposals has been
11 issued by a public authority.

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