

113TH CONGRESS
1ST SESSION

S. 428

To expedite the development of Arctic deepwater ports and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2013

Mr. BEGICH introduced the following bill; which was read twice and referred
to the Committee on Environment and Public Works

A BILL

To expedite the development of Arctic deepwater ports 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 “Arctic Deep Water
5 Ports Enhancement Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) There is a pressing national need to prepare
9 for increasing human activity and expanding com-
10 merce in the Arctic. Such activity will likely include

1 oil and gas development, fishing, shipping, and tour-
2 ism.

3 (2) To respond to this increase in activity, there
4 is a need for port facilities in the Arctic that can ac-
5 commodate deep-draft ships, support search and res-
6 cue activities, scientific research, and Arctic oil and
7 gas development, and serve as an Arctic harbor of
8 refuge.

9 (3) The residents of the Arctic region of the
10 United States are under-served in freight transpor-
11 tation, and deep-draft ports in the Arctic will en-
12 hance economic opportunities and quality of life for
13 such residents.

14 (4) Arctic communities rely on subsistence
15 hunting for economic and cultural survival, and it is
16 critical to protect the Arctic environment and main-
17 tain subsistence resources.

18 (5) Coordinating and expediting the develop-
19 ment of deep-draft ports in the Arctic is in the na-
20 tional interest.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) ARCTIC DEEPWATER PORT.—The term
24 “Arctic deepwater port” means any port facility lo-
25 cated—

1 (A) in waters north of 60 degrees latitude
2 north and west of 162 degrees longitude west
3 that have a water depth of not less than 30
4 feet; or

5 (B) in waters north of 63 degrees latitude
6 north that have a water depth of not less than
7 30 feet.

8 (2) CONSUMER PRICE INDEX.—The term “Con-
9 sumer Price Index” means the Consumer Price
10 Index for all-urban consumers, United States city
11 average, as published by the Bureau of Labor Sta-
12 tistics, or if such index shall cease to be published,
13 any successor index or reasonable substitute thereof.

14 (3) COORDINATOR.—The term “Coordinator”
15 means the Federal Coordinator for Arctic Deepwater
16 Port Projects appointed under section 7(b)(1).

17 (4) DEVELOPER.—The term “developer”, with
18 respect to an Arctic deepwater port, means any pri-
19 vate entity, State, municipal, or borough govern-
20 ment, Alaska Native corporation created by section
21 7 of the Alaska Native Claims Settlement Act (43
22 U.S.C. 1606), or the western Alaska community de-
23 velopment quota program created by section
24 305(i)(1) of the Magnuson-Stevens Fishery Con-

1 servation and Management Act that is seeking to de-
 2 velop an arctic deepwater port.

3 (5) DEVELOPMENT.—The term “development”,
 4 with respect to an Arctic deepwater port, means any
 5 aspect of the development, construction, or operation
 6 of such port.

7 (6) ELIGIBLE LENDER.—The term “eligible
 8 lender” means any non-Federal qualified institu-
 9 tional buyer (as defined by section 230.144A(a) of
 10 title 17, Code of Federal Regulations (or any suc-
 11 cessor regulation), known as Rule 144A(a) of the
 12 Securities and Exchange Commission and issued
 13 under the Securities Act of 1933), including—

14 (A) a qualified retirement plan (as defined
 15 in section 4974(c) of the Internal Revenue Code
 16 of 1986 (26 U.S.C. 4974(c)) that is a qualified
 17 institutional buyer; and

18 (B) a governmental plan (as defined in
 19 section 414(d) of the Internal Revenue Code of
 20 1986 (26 U.S.C. 414(d)) that is a qualified in-
 21 stitutional buyer.

22 (7) ENVIRONMENTAL REVIEW.—The term “en-
 23 vironmental review” means an environmental impact
 24 statement, environmental assessment, or other docu-
 25 ment required for compliance with the National En-

1 vironmental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.).

3 (8) FEDERAL GUARANTEE INSTRUMENT.—The
4 term “Federal guarantee instrument” means any
5 guarantee or other pledge by the Secretary to pledge
6 the full faith and credit of the United States to pay
7 all of the principal and interest on any loan or other
8 debt obligation entered into by a holder of a certifi-
9 cate of public convenience and necessity.

10 (9) OFFICE.—Except as otherwise specifically
11 provided, the term “Office” means the Office of the
12 Federal Arctic Deepwater Port Coordinator estab-
13 lished under section 7(a).

14 (10) SECRETARY.—Except as otherwise specifi-
15 cally provided, the term “Secretary” means the Sec-
16 retary of the Army.

17 **SEC. 4. ARCTIC DEEPWATER PORT DEVELOPMENT PART-**
18 **NERSHIPS.**

19 The Secretary is authorized to enter into partnership
20 agreements with developers—

21 (1) to plan, survey, design, construct, maintain,
22 or operate Arctic deepwater ports;

23 (2) to provide technical assistance for the ac-
24 tivities described in paragraph (1); and

1 (3) to receive funds for such activities from
 2 Federal, non-Federal, and private entities, including
 3 developers of an Arctic deepwater ports that have an
 4 agreement with the Secretary for such an activity
 5 under this section.

6 **SEC. 5. ARCTIC PORT INFRASTRUCTURE DEVELOPMENT**
 7 **FUND.**

8 (a) ESTABLISHMENT.—There is established in the
 9 Treasury of the United States a trust fund to be known
 10 as the “Arctic Port Infrastructure Development Fund”,
 11 consisting of such amounts as may be appropriated or
 12 credited to such Fund, as provided in this section.

13 (b) DEPOSITS IN THE FUND.—There may be depos-
 14 ited into the Arctic Port Infrastructure Development
 15 Fund—

16 (1) amounts from Federal, non-Federal, and
 17 private entities received by the Secretary under sec-
 18 tion 4(3); and

19 (2) such amounts as may be appropriated or
 20 transferred to the Fund under this section.

21 (c) EXPENDITURES.—Amounts in the Arctic Port In-
 22 frastructure Development Fund shall be available to the
 23 Secretary—

24 (1) to administer and carry out Arctic deep-
 25 water port development projects;

1 (2) to make refunds related to Arctic deepwater
2 port development projects that will not be completed;
3 and

4 (3) to make loan guarantees as described in
5 subsection (d).

6 (d) LOAN GUARANTEES.—

7 (1) AUTHORITY.—

8 (A) IN GENERAL.—The Secretary may
9 enter into agreements with developers to issue
10 Federal guarantee instruments with respect to
11 loans and other debt obligations for Arctic
12 deepwater ports.

13 (B) EXPIRATION OF AUTHORITY.—The au-
14 thority of the Secretary to issue Federal guar-
15 antee instruments under this section for Arctic
16 deepwater ports shall expire on the date that is
17 30 years from the date of enactment of this
18 Act.

19 (2) CONDITIONS.—The Secretary may issue a
20 Federal guarantee instrument under this section for
21 Arctic deepwater ports only if the loan or other debt
22 obligation guaranteed by the instrument has been
23 issued by an eligible lender.

24 (3) LIMITATIONS ON AMOUNTS.—

1 (A) LIMITATION ON PERCENTAGE OF
2 TOTAL CAPITAL COSTS.—The amount of loans
3 and other debt obligations guaranteed under
4 this section for Arctic deepwater ports shall not
5 exceed 75 percent of the total capital costs of
6 the project, including interest during construc-
7 tion.

8 (B) MAXIMUM AMOUNT GUARANTEED.—
9 The principal amount of loans and other debt
10 obligations guaranteed under this section shall
11 not exceed, in the aggregate, \$3,000,000,000,
12 which amount shall be indexed for United
13 States dollar inflation from the date of the en-
14 actment of this Act, as measured by the Con-
15 sumer Price Index.

16 (4) LOAN TERMS AND FEES.—

17 (A) IN GENERAL.—The Secretary may
18 issue Federal guarantee instruments under this
19 section that take into account repayment pro-
20 files and grace periods justified by project cash
21 flows and project-specific considerations.

22 (B) MAXIMUM LOAN TERM.—The term of
23 any loan guaranteed under this section shall not
24 exceed 30 years.

1 (C) FEES.—An eligible lender may assess
2 and collect from the borrower such other fees
3 and costs associated with the application and
4 origination of the loan or other debt obligation
5 as are reasonable and customary for a project
6 finance transaction in the transportation infra-
7 structure sector.

8 (5) REGULATIONS.—The Secretary may issue
9 regulations to carry out this subsection.

10 (e) TRANSFERS, AVAILABILITY OF FUNDS.—

11 (1) AUTHORIZATION OF APPROPRIATIONS.—

12 (A) ARCTIC DEEPWATER PORT DEVELOP-
13 MENT PROJECTS.—There are authorized to be
14 appropriated to the Arctic Port Infrastructure
15 Development Fund such sums as may be nec-
16 essary to carry out paragraphs (1) and (2) of
17 subsection (c).

18 (B) LOAN GUARANTEES.—There are au-
19 thorized to be appropriated such sums as may
20 be necessary to cover the cost of loan guaran-
21 tees under this section, as defined by section
22 502(5) of the Federal Credit Reform Act of
23 1990 (2 U.S.C. 661a(5)).

24 (2) TRANSFERS.—Amounts appropriated or
25 otherwise made available for any fiscal year for an

Arctic deepwater port facility may be transferred, at the option of the recipient of such amounts, to the Arctic Port Infrastructure Development Fund and administered by the Secretary as a component of an Arctic deepwater port development project.

(3) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to an authorization of appropriations in this subsection and other amounts in the Arctic Port Infrastructure Fund shall remain available until expended.

**SEC. 6. ENVIRONMENTAL REVIEWS FOR ARCTIC DEEP-
WATER PORTS.**

(a) DESIGNATION OF LEAD AGENCY.—

(1) IN GENERAL.—The Secretary—

(A) shall be the lead for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the development of an Arctic deepwater port, regardless of the agency or department of the United States taking the action that requires compliance with such Act; and

(B) shall be responsible for preparing any environmental review related to such action.

(2) CONSOLIDATION OF STATEMENTS.—In carrying out paragraph (1), with respect to any envi-

1 ronmental review for an action related to develop-
2 ment of an Arctic deepwater port, the Secretary
3 shall prepare a single document, which shall consoli-
4 date the environmental reviews of each agency or de-
5 partment of the United States considering any as-
6 pect of such action.

7 (3) SATISFACTION OF REQUIREMENTS.—An en-
8 vironmental review prepared by the Secretary under
9 paragraph (1) for an action related to development
10 of an Arctic deepwater port shall be adopted by each
11 appropriate agency or department of the United
12 States in satisfaction of the responsibilities of such
13 agency or department under the National Environ-
14 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
15 with respect to such action.

16 (b) EXPEDITED PROCESS.—The Secretary shall—

17 (1) not later than 1 year after the date that the
18 Secretary determines that an application for an envi-
19 ronmental review related to an Arctic deepwater port
20 is complete, issue a draft version of the environ-
21 mental review; and

22 (2) not later than 180 days after the date of
23 issuance of such draft version, issue the final version
24 of the environmental review, unless the Secretary for

1 good cause determines that additional time is need-
2 ed.

3 (c) COOPERATION WITH OTHER AGENCIES.—

4 (1) IN GENERAL.—Each agency or department
5 of the United States that, if not for subsection (a),
6 would be required to prepare an environmental re-
7 view for any aspect of the development of an Arctic
8 deepwater port project shall—

9 (A) cooperate with the Secretary; and

10 (B) comply with deadlines established by
11 subsection (b) for the issuance of the environ-
12 mental review by the Secretary.

13 **SEC. 7. FEDERAL COORDINATOR FOR ARCTIC DEEPWATER**
14 **PORT PROJECTS.**

15 (a) OFFICE OF THE FEDERAL ARCTIC DEEPWATER
16 PORT COORDINATOR.—There is established, as an inde-
17 pendent office in the Office of the Assistant Secretary of
18 the Army for Civil Works of the Department of the Army,
19 the Office of the Federal Arctic Deepwater Port Coordi-
20 nator.

21 (b) COORDINATOR FOR ARCTIC DEEPWATER PORT
22 PROJECTS.—

23 (1) APPOINTMENT.—The Office shall be headed
24 by a Federal Coordinator for Arctic Deepwater Port

1 Projects, who shall be appointed by the President,
2 by and with the advice and consent of the Senate.

3 (2) COMPENSATION.—The Coordinator shall be
4 compensated at the rate prescribed for level III of
5 the Executive Schedule set out in section 5314 of
6 title 5, United States Code.

7 (3) DUTIES.—The Coordinator shall be respon-
8 sible for—

9 (A) coordinating the expeditious discharge
10 of all activities of the agencies and departments
11 of the United States for the preparation of en-
12 vironmental reviews related to the development
13 of an Arctic deepwater port;

14 (B) ensuring the compliance of such agen-
15 cies or departments with the provisions of this
16 Act;

17 (C) assessing potential partnerships de-
18 scribed in section 4 and advising the Secretary
19 on such partnerships; and

20 (D) assessing applications for loan guaran-
21 tees under section 5(d) and advising the Sec-
22 retary on such terms as may be advisable to
23 issue such guarantees.

24 (c) PROHIBITION OF CERTAIN TERMS AND CONDI-
25 TIONS.—No agency or department of the United States

1 may include in any certificate, right-of-way, permit, lease,
 2 or other authorization issued for an Arctic deepwater port
 3 any term or condition that may be permitted, but is not
 4 required by, any applicable law if the Coordinator deter-
 5 mines that such term or condition would prevent or impair
 6 in any significant respect the expeditious construction and
 7 operation, or an expansion, of an Arctic deepwater port.

8 (d) PROHIBITION OF CERTAIN ACTIONS.—Unless re-
 9 quired by law, no agency or department of the United
 10 States shall add to, amend, or abrogate any certificate,
 11 right-of-way, permit, lease, or other authorization issued
 12 to an Arctic deepwater port if the Coordinator determines
 13 that the action would prevent or impair in any significant
 14 respect the expeditious construction and operation, or an
 15 expansion, of an Arctic deepwater port.

16 **SEC. 8. ASSISTANCE TO DEVELOPERS OF ARCTIC DEEP-**
 17 **WATER PORTS.**

18 (a) INFRASTRUCTURE FINANCE FUNDING.—Not-
 19 withstanding any limitation of chapter 6 of title 23,
 20 United States Code, a developer of an Arctic deepwater
 21 port shall be eligible for assistance from the funds made
 22 available pursuant to such chapter for the development of
 23 such port.

24 (b) ROLE OF THE COAST GUARD.—

1 (1) IN GENERAL.—The Commandant of the
2 Coast Guard is authorized—

3 (A) to enter into long-term lease for moor-
4 age, warehousing, hangar space, and logistical
5 support with a developer of an Arctic deep
6 water port; and

7 (B) to convey any property deemed surplus
8 to the Coast Guard’s needs in Alaska to any
9 Alaskan borough, municipality or native cor-
10 poration seeking to develop an Arctic deepwater
11 port.

12 **SEC. 9. DEEPWATER PORT ACT OF 1974 AMENDMENT.**

13 Section 3(9)(A) of the Deepwater Port Act of 1974
14 (33 U.S.C. 1502(9)(A)) is amended by striking “uses”
15 and inserting “uses, including general handling of cargo,
16 ship service or repair, logistical support for government
17 and private sector activities at sea, or service as a harbor
18 of refuge,”.

19 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

20 There is authorized to be appropriated \$3,000,000
21 for each fiscal year to carry out this Act.

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