

104TH CONGRESS
1ST SESSION

S. 395

AN ACT

To authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and to authorize the export of Alaska North Slope crude oil, 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,*

1 **TITLE I**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Alaska Power Admin-
4 istration Asset Sale and Termination Act”.

5 **SEC. 102. SALE OF SNETTISHAM AND EKLUTNA HYDRO-**
6 **ELECTRIC PROJECTS.**

7 (a) The Secretary of Energy is authorized and di-
8 rected to sell the Snettisham Hydroelectric Project (re-
9 ferred to in this Act as “Snettisham”) to the State of
10 Alaska in accordance with the terms of this Act and the
11 February 10, 1989, Snettisham Purchase Agreement, as
12 amended, between the Alaska Power Administration of the
13 United States Department of Energy and the Alaska
14 Power Authority and the Authority’s successors.

15 (b) The Secretary of Energy is authorized and di-
16 rected to sell the Eklutna Hydroelectric Project (referred
17 to in this Act as “Eklutna”) to the Municipality of An-
18 chorage doing business as Municipal Light and Power, the
19 Chugach Electric Association, Inc., and the Matanuska
20 Electric Association, Inc. (referred to in this Act as
21 “Eklutna Purchasers”), in accordance with the terms of
22 this Act and the August 2, 1989, Eklutna Purchase
23 Agreement, as amended, between the Alaska Power Ad-
24 ministration of the United States Department of Energy
25 and the Eklutna Purchasers.

1 (c) The heads of other Federal departments and
2 agencies, including the Secretary of the Interior, shall as-
3 sist the Secretary of Energy in implementing the sales au-
4 thorized and directed by this Act.

5 (d) Proceeds from the sales required by this title shall
6 be deposited in the Treasury of the United States to the
7 credit of miscellaneous receipts.

8 (e) There are authorized to be appropriated such
9 sums as may be necessary to prepare, survey, and acquire
10 Eklutna and Snettisham assets for sale and conveyance.
11 Such preparations and acquisitions shall provide sufficient
12 title to ensure the beneficial use, enjoyment, and occu-
13 pancy by the purchaser.

14 **SEC. 103. EXEMPTION AND OTHER PROVISIONS.**

15 (a)(1) After the sales authorized by this Act occur,
16 Eklutna and Snettisham, including future modifications,
17 shall continue to be exempt from the requirements of the
18 Federal Power Act (16 U.S.C. 791a et seq.) as amended.

19 (2) The exemption provided by paragraph (1) does
20 not affect the Memorandum of Agreement entered into
21 among the State of Alaska, the Eklutna Purchasers, the
22 Alaska Energy Authority, and Federal fish and wildlife
23 agencies regarding the protection, mitigation of, damages
24 to, and enhancement of fish and wildlife, dated August
25 7, 1991, which remains in full force and effect.

1 (3) Nothing in this title or the Federal Power Act
2 preempts the State of Alaska from carrying out the re-
3 sponsibilities and authorities of the memorandum of
4 Agreement.

5 (b)(1) The United States District Court for the Dis-
6 trict of Alaska shall have jurisdiction to review decisions
7 made under the Memorandum of Agreement and to en-
8 force the provisions of the Memorandum of Agreement,
9 including the remedy of specific performance.

10 (2) An action seeking review of a Fish and Wildlife
11 Program (“Program”) of the Governor of Alaska under
12 the Memorandum of Agreement or challenging actions of
13 any of the parties to the Memorandum of Agreement prior
14 to the adoption of the Program shall be brought not later
15 than ninety days after the date on which the Program is
16 adopted by the Governor of Alaska, or be barred.

17 (3) An action seeking review of implementation of the
18 Program shall be brought not later than ninety days after
19 the challenged act implementing the Program, or be
20 barred.

21 (c) With respect to Eklutna lands described in Ex-
22 hibit A of the Eklutna Purchase Agreement:

23 (1) The Secretary of the Interior shall issue
24 rights-of-way to the Alaska Power Administration

1 for subsequent reassignment to the Eklutna Pur-
2 chasers—

3 (A) at no cost to the Eklutna Purchasers;

4 (B) to remain effective for a period equal
5 to the life of Eklutna as extended by improve-
6 ments, repairs, renewals, or replacements; and

7 (C) sufficient for the operation of, mainte-
8 nance of, repair to, and replacement of, and ac-
9 cess to, Eklutna facilities located on military
10 lands and lands managed by the Bureau of
11 Land Management, including lands selected by
12 the State of Alaska.

13 (2) If the Eklutna Purchasers subsequently sell
14 or transfer Eklutna to private ownership, the Bu-
15 reau of Land Management may assess reasonable
16 and customary fees for continued use of the rights-
17 of-way on lands managed by the Bureau of Land
18 Management and military lands in accordance with
19 existing law.

20 (3) Fee title to lands at Anchorage Substation
21 shall be transferred to Eklutna Purchasers at no ad-
22 ditional cost if the Secretary of the Interior deter-
23 mines that pending claims to, and selections of,
24 those lands are invalid or relinquished.

1 (4) With respect to the Eklutna lands identified
2 in paragraph 1 of Exhibit A of the Eklutna Pur-
3 chase Agreement, the State of Alaska may select,
4 and the Secretary of the Interior shall convey to the
5 State, improved lands under the selection entitle-
6 ments in section 6 of the Act of July 7, 1958 (com-
7 monly referred to as the Alaska Statehood Act, Pub-
8 lic Law 85–508, 72 Stat. 339, as amended), and the
9 North Anchorage Land Agreement dated January
10 31, 1983. This conveyance shall be subject to the
11 rights-of-way provided to the Eklutna Purchasers
12 under paragraph (1).

13 (d) With respect to the Snettisham lands identified
14 in paragraph 1 of Exhibit A of the Snettisham Purchase
15 Agreement and Public Land Order No. 5108, the State
16 of Alaska may select, and the Secretary of the Interior
17 shall convey to the State of Alaska, improved lands under
18 the selection entitlements in section 6 of the Act of July
19 7, 1958 (commonly referred to as the Alaska Statehood
20 Act, Public Law 85–508, 72 Stat. 339, as amended).

21 (e) Not later than one year after both of the sales
22 authorized in section 102 have occurred, as measured by
23 the Transaction Dates stipulated in the Purchase Agree-
24 ments, the Secretary of Energy shall—

1 (1) complete the business of, and close out, the
2 Alaska Power Administration;

3 (2) submit to Congress a report documenting
4 the sales; and

5 (3) return unobligated balances of funds appro-
6 priated for the Alaska Power Administration to the
7 Treasury of the United States.

8 (f) The Act of July 31, 1950 (64 Stat. 382) is re-
9 pealed effective on the date, as determined by the Sec-
10 retary of Energy, that all Eklutna assets have been con-
11 veyed to the Eklunta Purchasers.

12 (g) Section 204 of the Flood Control Act of 1962 (76
13 Stat. 1193) is repealed effective on the date, as deter-
14 mined by the Secretary of Energy, that all Snettisham as-
15 sets have been conveyed to the State of Alaska.

16 (h) As of the later of the two dates determined in
17 subsections (f) and (g), section 302(a) of the Department
18 of Energy Organization Act (42 U.S.C. 7152(a)) is
19 amended—

20 (1) in paragraph (1)—

21 (A) by striking subparagraph (C); and

22 (B) by redesignating subparagraphs (D),

23 (E), and (F) as subparagraphs (C), (D), and

24 (E) respectively; and

1 the power marketing administrations in the 48 con-
2 tiguous States; and

3 (2) accordingly, the enactment of section 102
4 should not be understood as lending support to any
5 proposal to sell any other hydroelectric project or the
6 power marketing administrations.

7 **TITLE II**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as “Trans-Alaska Pipeline
10 Amendment Act of 1995”.

11 **SEC. 202. TAPS ACT AMENDMENTS.**

12 Section 203 of the Act entitled the “Trans-Alaska
13 Pipeline Authorization Act”, as amended (43 U.S.C.
14 1652), is amended by inserting the following new sub-
15 section (f):

16 “(f) EXPORTS OF ALASKAN NORTH SLOPE OIL.—

17 “(1) Subject to paragraphs (2) through (6), of
18 this subsection and notwithstanding any other provi-
19 sion of law (including any regulation), any oil trans-
20 ported by pipeline over right-of-way granted pursu-
21 ant to this section may be exported after October
22 31, 1995 unless the President finds that exportation
23 of this oil is not in the national interest. In evaluat-
24 ing whether the proposed exportation is in the na-
25 tional interest, the President—

1 “(A) shall determine whether the proposed
2 exportation would diminish the total quantity or
3 quality of petroleum available to the United
4 States;

5 “(B) shall conduct and complete an appro-
6 priate environmental review of the proposed ex-
7 portation, including consideration of appro-
8 priate measures to mitigate any potential ad-
9 verse effect on the environment, within four
10 months after the date of enactment of this sub-
11 section; and

12 “(C) shall consider, after consultation with
13 the Attorney General and Secretary of Com-
14 merce, whether anticompetitive activity by a
15 person exporting crude oil under authority of
16 this subsection is likely to cause sustained ma-
17 terial crude oil supply shortages or sustained
18 crude oil prices significantly above world mar-
19 ket levels for independent refiners that would
20 cause sustained material adverse employment
21 effects in the United States.

22 The President shall make his national interest deter-
23 mination within five months after the date of enact-
24 ment of this subsection or 30 days after completion
25 of the environmental review, whichever is earlier.

1 The President may make his determination subject
2 to such terms and conditions (other than a volume
3 limitation) as are necessary or appropriate to ensure
4 that the exportation is consistent with the national
5 interest.

6 “(2) Except in the case of oil exported to a
7 country pursuant to a bilateral international oil sup-
8 ply agreement entered into by the United States
9 with the country before June 25, 1979, or to a coun-
10 try pursuant to the International Emergency Oil
11 Sharing Plan of the International Energy Agency,
12 any oil transported by pipeline over right-of-way
13 granted pursuant to this section, shall, when ex-
14 ported, be transported by a vessel documented under
15 the laws of the United States and owned by a citizen
16 of the United States (as determined in accordance
17 with section 2 of the Shipping Act, 1916 (46 U.S.C.
18 App. 802)).

19 “(3) Nothing in this subsection shall restrict
20 the authority of the President under the Constitu-
21 tion, the International Emergency Economic Powers
22 Act (50 U.S.C. 1701 et seq.), or the National Emer-
23 gencies Act (50 U.S.C. 1601 et seq.) to prohibit ex-
24 portation of the oil.

1 “(4) The Secretary of Commerce shall issue any
2 rules necessary for implementation, including any li-
3 censing requirements and conditions, of the Presi-
4 dent’s national interest determination within 30 days
5 of the date of such determination by the President.
6 The Secretary of Commerce shall consult with the
7 Secretary of Energy in administering the provisions
8 of this subsection.

9 “(5) If the Secretary of Commerce finds that
10 anticompetitive activity by a person exporting crude
11 oil under authority of this subsection has caused
12 sustained material crude oil supply shortages or sus-
13 tained crude oil prices significantly above world mar-
14 ket levels and further finds that these supply short-
15 ages or price increases have caused sustained mate-
16 rial adverse employment effects in the United
17 States, the Secretary of Commerce may recommend
18 to the President who may take appropriate action
19 against such person, which may include modification
20 or revocation of the authorization to export crude
21 oil.

22 “(6) Administrative action with respect to an
23 authorization under this subsection is not subject to
24 sections 551 and 553 through 559 of title 5, United
25 States Code.”.

1 **SEC. 203. ANNUAL REPORT.**

2 Section 103(f) of the Energy Policy and Conservation
3 Act (42 U.S.C. 6212(f)) is amended by adding at the end
4 thereof the following:

5 “In the first quarter report for each new calendar
6 year, the President shall indicate whether independent re-
7 finers in Petroleum Administration for Defense District
8 V have been unable to secure adequate supplies of crude
9 oil as a result of exports of Alaskan North Slope crude
10 oil in the prior calendar year and shall make such rec-
11 ommendations to the Congress as may be appropriate.”.

12 **SEC. 204. GAO REPORT.**

13 The Comptroller General of the United States shall
14 conduct a review of energy production in California and
15 Alaska and the effects of Alaskan North Slope crude oil
16 exports, if any, on consumers, independent refiners, and
17 shipbuilding and ship repair yards on the West Coast. The
18 Comptroller General shall commence this review four years
19 after the date of enactment of this Act and, within one
20 year after commencing the review, shall provide a report
21 to the Committee on Energy and Natural Resources in
22 the Senate and the Committee on Resources in the House
23 of Representatives. The report shall contain a statement
24 of the principal findings of the review and such rec-
25 ommendations for consideration by the Congress as may
26 be appropriate.

1 **SEC. 205. RETIREMENT OF CERTAIN COSTS INCURRED FOR**
2 **THE CONSTRUCTION OF NON-FEDERAL PUB-**
3 **LICLY OWNED SHIPYARDS.**

4 (a) IN GENERAL.—The Secretary of Energy shall—

5 (1) deposit proceeds of sales out of the Naval
6 Petroleum Reserve in a special account in amounts
7 sufficient to make payments under subsections (b)
8 and (c); and

9 (2) out of the account described in paragraph
10 (1), provide, in accordance with subsections (b) and
11 (c), financial assistance to a port authority that—

12 (A) manages a non-Federal publicly owned
13 shipyard on the United States west coast that
14 is capable of handling very large crude carrier
15 tankers; and

16 (B) has obligations outstanding as of May
17 15, 1995, that were dated as of June 1, 1977,
18 and are related to the acquisition of non-Fed-
19 eral publicly owned dry docks that were origi-
20 nally financed through public bonds.

21 (b) ACQUISITION AND REFURBISHMENT OF INFRA-
22 STRUCTURE.—The Secretary shall provide, for acquisition
23 of infrastructure and refurbishment of existing infrastruc-
24 ture, \$10,000,000 in fiscal year 1996.

25 (c) RETIREMENT OF OBLIGATIONS.—The Secretary
26 shall provide, for retirement of obligations outstanding as

1 of May 15, 1995, that were dated as of June 1, 1977,
2 and are related to the acquisition of non-Federal publicly
3 owned dry docks that were originally financed through
4 public bonds—

- 5 (1) \$6,000,000 in fiscal year 1996;
- 6 (2) \$13,000,000 in fiscal year 1997;
- 7 (3) \$10,000,000 in fiscal year 1998;
- 8 (4) \$8,000,000 in fiscal year 1999;
- 9 (5) \$6,000,000 in fiscal year 2000;
- 10 (6) \$3,500,000 in fiscal year 2001; and
- 11 (7) \$3,500,000 in fiscal year 2002.

12 **SEC. 206. OIL POLLUTION ACT OF 1990.**

13 Title VI of the Oil Pollution Act of 1990 (Public Law
14 101-380; 104 Stat. 554) is amended by adding at the end
15 thereof the following new section:

16 **“SEC. 6005. TOWING VESSEL REQUIRED.**

17 “(a) IN GENERAL.—In addition to the requirements
18 for response plans for vessels established in section 311(j)
19 of the Federal Water Pollution Control Act, as amended
20 by this Act, a response plan for a vessel operating within
21 the boundaries of the Olympic Coast National Marine
22 Sanctuary or the Strait of Juan de Fuca shall provide for
23 a towing vessel to be able to provide assistance to such
24 vessel within six hours of a request for assistance. The
25 towing vessel shall be capable of—

1 “(i) promote development or increased pro-
2 duction on producing or non-producing leases;
3 or

4 “(ii) encourage production of marginal re-
5 sources on producing or non-producing leases;
6 through primary, secondary, or tertiary recov-
7 ery means, reduce or eliminate any royalty or
8 net profit share set forth in the lease(s). With
9 the lessee’s consent, the Secretary may make
10 other modifications to the royalty or net profit
11 share terms of the lease in order to achieve
12 these purposes.

13 “(B)(i) Notwithstanding the provisions of this
14 Act other than this subparagraph, with respect to
15 any lease or unit in existence on the date of enact-
16 ment of the Outer Continental Shelf Deep Water
17 Royalty Relief Act meeting the requirements of this
18 subparagraph, no royalty payments shall be due on
19 new production, as defined in clause (iv) of this sub-
20 paragraph, from any lease or unit located in water
21 depths of 200 meters or greater in the Western and
22 Central Planning Areas of the Gulf of Mexico, in-
23 cluding that portion of the Eastern Planning Area
24 of the Gulf of Mexico encompassing whole lease
25 blocks lying west of 87 degrees, 30 minutes West

1 longitude, until such volume of production as deter-
2 mined pursuant to clause (ii) has been produced by
3 the lessee.

4 “(ii) Upon submission of a complete application
5 by the lessee, the Secretary shall determine within
6 180 days of such application whether new produc-
7 tion from such lease or unit would be economic in
8 the absence of the relief from the requirement to pay
9 royalties provided for by clause (i) of this subpara-
10 graph. In making such determination, the Secretary
11 shall consider the increased technological and finan-
12 cial risk of deep water development and all costs as-
13 sociated with exploring, developing, and producing
14 from the lease. The lessee shall provide information
15 required for a complete application to the Secretary
16 prior to such determination. The Secretary shall
17 clearly define the information required for a com-
18 plete application under this section. Such application
19 may be made on the basis of an individual lease or
20 unit. If the Secretary determines that such new pro-
21 duction would be economic in the absence of the re-
22 lief from the requirement to pay royalties provided
23 for by clause (i) of this subparagraph, the provisions
24 of clause (i) shall not apply to such production. If
25 the Secretary determines that such new production

1 would not be economic in the absence of the relief
2 from the requirement to pay royalties provided for
3 by clause (i), the Secretary must determine the vol-
4 ume of production from the lease or unit on which
5 no royalties would be due in order to make such new
6 production economically viable; except that for new
7 production as defined in clause (iv)(aa), in no case
8 will that volume be less than 17.5 million barrels of
9 oil equivalent in water depths of 200 to 400 meters,
10 52.5 million barrels of oil equivalent in 400–800 me-
11 ters of water, and 87.5 million barrels of oil equiva-
12 lent in water depths greater than 800 meters. Rede-
13 termination of the applicability of clause (i) shall be
14 undertaken by the Secretary when requested by the
15 lessee prior to the commencement of the new pro-
16 duction and upon significant change in the factors
17 upon which the original determination was made.
18 The Secretary shall make such redetermination with-
19 in 120 days of submission of a complete application.
20 The Secretary may extend the time period for mak-
21 ing any determination or redetermination under this
22 clause for 30 days, or longer if agreed to by the ap-
23 plicant, if circumstances so warrant. The lessee shall
24 be notified in writing of any determination or rede-
25 termination and the reasons for and assumptions

1 used for such determination. Any determination or
2 redetermination under this clause shall be a final
3 agency action. The Secretary's determination or re-
4 determination shall be judicially reviewable under
5 section 10(a) of the Administrative Procedures Act
6 (5 U.S.C. 702), only for actions filed within 30 days
7 of the Secretary's determination or redetermination.

8 “(iii) In the event that the Secretary fails to
9 make the determination or redetermination called
10 for in clause (ii) upon application by the lessee with-
11 in the time period, together with any extension
12 thereof, provided for by clause (ii), no royalty pay-
13 ments shall be due on new production as follows:

14 “(I) For new production, as defined in
15 clause (iv)(I) of this subparagraph, no royalty
16 shall be due on such production according to
17 the schedule of minimum volumes specified in
18 clause (ii) of this subparagraph.

19 “(II) For new production, as defined in
20 clause (iv)(II) of this subparagraph, no royalty
21 shall be due on such production for one year
22 following the start of such production.

23 “(iv) For purposes of this subparagraph, the
24 term ‘new production’ is—

1 “(I) any production from a lease from
2 which no royalties are due on production, other
3 than test production, prior to the date of enact-
4 ment of the Outer Continental Shelf Deep
5 Water Royalty Relief Act; or

6 “(II) any production resulting from lease
7 development activities pursuant to a Develop-
8 ment Operations Coordination Document, or
9 supplement thereto that would expand produc-
10 tion significantly beyond the level anticipated in
11 the Development Operations Coordination Doc-
12 ument, approved by the Secretary after the date
13 of enactment of the Outer Continental Shelf
14 Deep Water Royalty Relief Act.

15 “(v) During the production of volumes deter-
16 mined pursuant to clauses (ii) or (iii) of this sub-
17 paragraph, in any year during which the arithmetic
18 average of the closing prices on the New York Mer-
19 cantile Exchange for light sweet crude oil exceeds
20 \$28.00 per barrel, any production of oil will be sub-
21 ject to royalties at the lease stipulated royalty rate.
22 Any production subject to this clause shall be count-
23 ed toward the production volume determined pursu-
24 ant to clause (ii) or (iii). Estimated royalty pay-
25 ments will be made if such average of the closing

1 prices for the previous year exceeds \$28.00. After
2 the end of the calendar year, when the new average
3 price can be calculated, lessees will pay any royalties
4 due, with interest but without penalty, or can apply
5 for a refund, with interest, of any overpayment.

6 “(vi) During the production of volumes deter-
7 mined pursuant to clause (ii) or (iii) of this subpara-
8 graph, in any year during which the arithmetic aver-
9 age of the closing prices on the New York Mer-
10 cantile Exchange for natural gas exceeds \$3.50 per
11 million British thermal units, any production of nat-
12 ural gas will be subject to royalties at the lease stip-
13 ulated royalty rate. Any production subject to this
14 clause shall be counted toward the production vol-
15 ume determined pursuant to clauses (ii) or (iii). Es-
16 timated royalty payments will be made if such aver-
17 age of the closing prices for the previous year ex-
18 ceeds \$3.50. After the end of the calendar year,
19 when the new average price can be calculated, les-
20 sees will pay any royalties due, with interest but
21 without penalty, or can apply for a refund, with in-
22 terest, of any overpayment.

23 “(vii) The prices referred to in clauses (v) and
24 (vi) of this subparagraph shall be changed during
25 any calendar year after 1994 by the percentage, if

1 any, by which the implicit price deflator for the
2 gross domestic product changed during the preced-
3 ing calendar year.”.

4 **SEC. 303. NEW LEASES.**

5 Section 8(a)(1) of the Outer Continental Shelf Lands
6 Act, as amended (43 U.S.C. 1337(a)(1)) is amended as
7 follows:

8 (1) Redesignate section 8(a)(1)(H) as section
9 8(a)(1)(I); and

10 (2) Add a new section 8(a)(1)(H) as follows:

11 “(H) cash bonus bid with royalty at no less
12 than 12 and ½ per centum fixed by the Sec-
13 retary in amount or value of production saved,
14 removed, or sold, and with suspension of royalti-
15 ties for a period, volume, or value of production
16 determined by the Secretary. Such suspensions
17 may vary based on the price of production from
18 the lease.”.

19 **SEC. 304. LEASE SALES.**

20 For all tracts located in water depths of 200 meters
21 or greater in the Western and Central Planning Area of
22 the Gulf of Mexico, including that portion of the Eastern
23 Planning Area of the Gulf of Mexico encompassing whole
24 lease blocks lying west of 87 degrees, 30 minutes West
25 longitude, any lease sale within five years of the date of

1 enactment of this title, shall use the bidding system au-
2 thorized in section 8(a)(1)(H) of the Outer Continental
3 Shelf Lands Act, as amended by this title, except that the
4 suspension of royalties shall be set at a volume of not less
5 than the following:

6 (1) 17.5 million barrels of oil equivalent for
7 leases in water depths of 200 to 400 meters;

8 (2) 52.5 million barrels of oil equivalent for
9 leases in 400 to 800 meters of water; and

10 (3) 87.5 million barrels of oil equivalent for
11 leases in water depths greater than 800 meters.

12 **SEC. 305. REGULATIONS.**

13 The Secretary shall promulgate such rules and regu-
14 lations as are necessary to implement the provisions of this
15 title within 180 days after the enactment of this Act.

Passed the Senate May 16 (legislative day, May 15),
1995.

Attest:

Secretary.

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