

110TH CONGRESS
2D SESSION

H. R. 6165

To amend the Internal Revenue Code of 1986 to assist individuals confronting high gasoline and diesel fuel costs in commuting to work by allowing a refundable credit against income tax based on the business standard mileage rate for commuting miles, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2008

Mr. WHITFIELD of Kentucky introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Natural Resources, Oversight and Government Reform, Armed Services, and Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to assist individuals confronting high gasoline and diesel fuel costs in commuting to work by allowing a refundable credit against income tax based on the business standard mileage rate for commuting miles, 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 (a) SHORT TITLE.—This Act may be cited as the
5 “End the Pain at the Pump Act of 2008”.

1 (b) TABLE OF CONTENTS.—

Sec. 1. Short title.

TITLE I—CREDIT TO REDUCE COST OF COMMUTING

Sec. 101. Standard mileage rate credit for individuals commuting in gasoline or diesel-powered vehicles.

TITLE II—REVENUE PROVISIONS

Subtitle A—Income of Partners for Performing Investment Management Services

Sec. 201. Income of partners for performing investment management services treated as ordinary income received for performance of services.

Subtitle B—Nonqualified Deferred Compensation From Certain Tax Indifferent Parties

Sec. 211. Nonqualified deferred compensation from certain tax indifferent parties.

Subtitle C—Provisions Related to Certain Investment Partnerships

Sec. 221. Income of partners for performing investment management services treated as ordinary income received for performance of services.

Sec. 222. Indebtedness incurred by a partnership in acquiring securities and commodities not treated as acquisition indebtedness for organizations which are partners with limited liability.

Sec. 223. Application to partnership interests and tax sharing agreements of rule treating certain gain on sales between related persons as ordinary income.

TITLE III—INCREASE OUR ENERGY CAPACITY

Subtitle A—Refineries

Sec. 301. Short title.

Sec. 302. Definitions.

Sec. 303. State assistance.

Sec. 304. Refinery process coordination and procedures.

Sec. 305. Designation of closed military bases or other facilities.

Sec. 306. Savings clause.

Sec. 307. Refinery revitalization repeal.

Subtitle B—Oil and Gas Development on the Coastal Plain of Alaska

Sec. 311. Definitions.

Sec. 312. Leasing program for lands within the Coastal Plain.

Sec. 313. Lease sales.

Sec. 314. Grant of leases by the Secretary.

Sec. 315. Lease terms and conditions.

Sec. 316. Coastal plain environmental protection.

Sec. 317. Expedited judicial review.

Sec. 318. Federal and State distribution of revenues.

- Sec. 319. Rights-of-way across the Coastal Plain.
 Sec. 320. Conveyance.
 Sec. 321. Local government impact aid and community service assistance.

Subtitle C—Opening of Outer Continental Shelf

- Sec. 331. Short title.
 Sec. 332. Policy.
 Sec. 333. Definitions under the Outer Continental Shelf Lands Act.
 Sec. 334. Determination of Adjacent Zones and planning areas.
 Sec. 335. Administration of leasing.
 Sec. 336. Grant of leases by Secretary.
 Sec. 337. Reservation of lands and rights.
 Sec. 338. Outer Continental Shelf Leasing Program.
 Sec. 339. Coordination with Adjacent States.
 Sec. 340. Environmental studies.
 Sec. 341. Federal Energy Natural Resources Enhancement Act of 2008.
 Sec. 342. Termination of effect of laws prohibiting the spending of appropriated funds for certain purposes.
 Sec. 343. Outer Continental Shelf incompatible use.
 Sec. 344. Repurchase of certain leases.
 Sec. 345. Offsite environmental mitigation.
 Sec. 346. Minerals Management Service.
 Sec. 347. Authority to use decommissioned offshore oil and gas platforms and other facilities for artificial reef, scientific research, or other uses.
 Sec. 348. Repeal of requirement to conduct comprehensive inventory of OCS oil and natural gas resources.
 Sec. 349. Leases for areas located within 100 miles of California or Florida.
 Sec. 350. Coastal impact assistance.
 Sec. 351. Oil shale and tar sands amendments.

TITLE IV—REPEAL OF REQUIREMENT WITH RESPECT TO THE
 PROCUREMENT AND ACQUISITION OF ALTERNATIVE FUELS

- Sec. 401. Repeal of requirement with respect to the procurement and acquisition of alternative fuels.

1 **TITLE I—CREDIT TO REDUCE**
 2 **COST OF COMMUTING**
 3 **SEC. 101. STANDARD MILEAGE RATE CREDIT FOR INDIVID-**
 4 **UALS COMMUTING IN GASOLINE OR DIESEL-**
 5 **POWERED VEHICLES.**

- 6 (a) IN GENERAL.—Subchapter B of chapter 65 of the
 7 Internal Revenue Code of 1986 is amended by adding at
 8 the end the following new section:

1 **“SEC. 6431. STANDARD MILEAGE RATE CREDIT FOR INDI-**
2 **VIDUALS COMMUTING IN GASOLINE OR DIE-**
3 **SEL-POWERED VEHICLES.**

4 “(a) IN GENERAL.—In the case of an individual,
5 there shall be allowed as a credit against the tax imposed
6 by this subtitle an amount equal to 35 percent of the prod-
7 uct of—

8 “(1) the applicable standard mileage rate, and

9 “(2) the number of the qualified commuting
10 miles of the taxpayer, the taxpayer’s spouse, and
11 any individual described in subsection (f) with re-
12 spect to the taxpayer during the credit period.

13 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
14 COME.—The amount of the credit allowed by subsection
15 (a) (determined without regard to this subsection) shall
16 be reduced (but not below zero) by 5 percent of so much
17 of the taxpayer’s adjusted gross income as exceeds
18 \$75,000 (\$150,000 in the case of a joint return).

19 “(c) APPLICABLE STANDARD MILEAGE RATE.—For
20 purposes of this section, the term ‘applicable standard
21 mileage rate’ means the standard mileage rate in effect
22 under section 162(a) as of the date of the enactment of
23 this section.

24 “(d) QUALIFIED COMMUTING MILES.—For purposes
25 of this section—

1 “(1) IN GENERAL.—The term ‘qualified com-
2 muting miles’ means, with respect to an individual,
3 the miles driven between the individual’s residence
4 and place of employment if—

5 “(A) the vehicle used to transport the indi-
6 vidual is a highway vehicle fueled primarily by
7 gasoline or diesel fuel,

8 “(B) the vehicle is registered (under the
9 laws of the State in which such vehicle is re-
10 quired to be registered) to the taxpayer, and

11 “(C) the taxpayer pays the entire cost of
12 the fuel used in such transportation.

13 “(2) EXCLUSION FOR BUSINESS USE.—Such
14 term shall not include any use of a vehicle in a trade
15 or business unless—

16 “(A) the taxpayer is allowed (but for sub-
17 paragraph (B)) to use the standard mileage
18 rate under section 162(a) for such use, and

19 “(B) elects not to use such rate for such
20 use.

21 “(3) EXCLUSION FOR MILES OUTSIDE THE
22 UNITED STATES.—Such term shall not include any
23 mile outside the United States.

24 “(e) CREDIT PERIOD.—For purposes of this section,
25 the term ‘credit period’ means the period—

1 “(1) beginning on June 1, 2008, and

2 “(2) ending on May 30, 2011.

3 “(f) DENIAL OF CREDIT TO DEPENDENTS.—In the
4 case of an individual with respect to whom a deduction
5 under section 151 is allowable to another taxpayer for a
6 taxable year beginning in the calendar year in which the
7 individual’s taxable year begins—

8 “(1) no credit shall be allowed under this sec-
9 tion to such individual for such individual’s taxable
10 year, but

11 “(2) the qualified commuting miles of such in-
12 dividual for such year may be taken into account by
13 such other taxpayer.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Paragraph (2) of section 1324(b) of title
16 31, United States Code, is amended by inserting “,
17 35A,” after “section 35”.

18 (2) The table of sections for subchapter B of
19 chapter 65 of the Internal Revenue Code of 1986 is
20 amended by adding at the end the following new
21 item:

“Sec. 6431. Standard mileage rate credit for individuals commuting in gasoline
or diesel-powered vehicles.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to miles commuted after June 30,
24 2008, in taxable years ending after such date.

1 **TITLE II—REVENUE PROVISIONS**
 2 **Subtitle A—Income of Partners for**
 3 **Performing Investment Manage-**
 4 **ment Services**

5 **SEC. 201. INCOME OF PARTNERS FOR PERFORMING IN-**
 6 **VESTMENT MANAGEMENT SERVICES TREAT-**
 7 **ED AS ORDINARY INCOME RECEIVED FOR**
 8 **PERFORMANCE OF SERVICES.**

9 (a) IN GENERAL.—Part I of subchapter K of chapter
 10 1 of the Internal Revenue Code of 1986 is amended by
 11 adding at the end the following new section:

12 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 13 **VESTMENT MANAGEMENT SERVICES TO**
 14 **PARTNERSHIP.**

15 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
 16 PARTNERSHIP ITEMS.—For purposes of this title, in the
 17 case of an investment services partnership interest—

18 “(1) IN GENERAL.—Notwithstanding section
 19 702(b)—

20 “(A) any net income with respect to such
 21 interest for any partnership taxable year shall
 22 be treated as ordinary income for the perform-
 23 ance of services, and

24 “(B) any net loss with respect to such in-
 25 terest for such year, to the extent not dis-

1 allowed under paragraph (2) for such year,
2 shall be treated as an ordinary loss.

3 “(2) TREATMENT OF LOSSES.—

4 “(A) LIMITATION.—Any net loss with re-
5 spect to such interest shall be allowed for any
6 partnership taxable year only to the extent that
7 such loss does not exceed the excess (if any)
8 of—

9 “(i) the aggregate net income with re-
10 spect to such interest for all prior partner-
11 ship taxable years, over

12 “(ii) the aggregate net loss with re-
13 spect to such interest not disallowed under
14 this subparagraph for all prior partnership
15 taxable years.

16 “(B) CARRYFORWARD.—Any net loss for
17 any partnership taxable year which is not al-
18 lowed by reason of subparagraph (A) shall be
19 treated as an item of loss with respect to such
20 partnership interest for the succeeding partner-
21 ship taxable year.

22 “(C) BASIS ADJUSTMENT.—No adjustment
23 to the basis of a partnership interest shall be
24 made on account of any net loss which is not
25 allowed by reason of subparagraph (A).

1 “(D) EXCEPTION FOR BASIS ATTRIB-
2 UTABLE TO PURCHASE OF A PARTNERSHIP IN-
3 TEREST.—In the case of an investment services
4 partnership interest acquired by purchase, para-
5 graph (1)(B) shall not apply to so much of any
6 net loss with respect to such interest for any
7 taxable year as does not exceed the excess of—

8 “(i) the basis of such interest imme-
9 diately after such purchase, over

10 “(ii) the aggregate net loss with re-
11 spect to such interest to which paragraph
12 (1)(B) did not apply by reason of this sub-
13 paragraph for all prior taxable years.

14 Any net loss to which paragraph (1)(B) does
15 not apply by reason of this subparagraph shall
16 not be taken into account under subparagraph
17 (A).

18 “(E) PRIOR PARTNERSHIP YEARS.—Any
19 reference in this paragraph to prior partnership
20 taxable years shall only include prior partner-
21 ship taxable years to which this section applies.

22 “(3) NET INCOME AND LOSS.—For purposes of
23 this section—

24 “(A) NET INCOME.—The term ‘net in-
25 come’ means, with respect to any investment

1 services partnership interest, for any partner-
2 ship taxable year, the excess (if any) of—

3 “(i) all items of income and gain
4 taken into account by the holder of such
5 interest under section 702 with respect to
6 such interest for such year, over

7 “(ii) all items of deduction and loss so
8 taken into account.

9 “(B) NET LOSS.—The term ‘net loss’
10 means with respect to such interest for such
11 year, the excess (if any) of the amount de-
12 scribed in subparagraph (A)(ii) over the amount
13 described in subparagraph (A)(i).

14 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

15 “(1) GAIN.—Any gain on the disposition of an
16 investment services partnership interest shall be
17 treated as ordinary income for the performance of
18 services.

19 “(2) LOSS.—Any loss on the disposition of an
20 investment services partnership interest shall be
21 treated as an ordinary loss to the extent of the ex-
22 cess (if any) of—

23 “(A) the aggregate net income with respect
24 to such interest for all partnership taxable
25 years, over

1 “(B) the aggregate net loss with respect to
2 such interest allowed under subsection (a)(2)
3 for all partnership taxable years.

4 “(3) DISPOSITION OF PORTION OF INTEREST.—
5 In the case of any disposition of an investment serv-
6 ices partnership interest, the amount of net loss
7 which otherwise would have (but for subsection
8 (a)(2)(C)) applied to reduce the basis of such inter-
9 est shall be disregarded for purposes of this section
10 for all succeeding partnership taxable years.

11 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
12 ERTY.—In the case of any distribution of appre-
13 ciated property by a partnership with respect to any
14 investment services partnership interest, gain shall
15 be recognized by the partnership in the same man-
16 ner as if the partnership sold such property at fair
17 market value at the time of the distribution. For
18 purposes of this paragraph, the term ‘appreciated
19 property’ means any property with respect to which
20 gain would be determined if sold as described in the
21 preceding sentence.

22 “(5) APPLICATION OF SECTION 751.—In apply-
23 ing section 751(a), an investment services partner-
24 ship interest shall be treated as an inventory item.

1 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
2 EST.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘investment serv-
4 ices partnership interest’ means any interest in a
5 partnership which is held by any person if such per-
6 son provides (directly or indirectly) a substantial
7 quantity of any of the following services with respect
8 to the assets of the partnership in the conduct of the
9 trade or business of providing such services:

10 “(A) Advising as to the advisability of in-
11 vesting in, purchasing, or selling any specified
12 asset.

13 “(B) Managing, acquiring, or disposing of
14 any specified asset.

15 “(C) Arranging financing with respect to
16 acquiring specified assets.

17 “(D) Any activity in support of any service
18 described in subparagraphs (A) through (C).

19 For purposes of this paragraph, the term ‘specified
20 asset’ means securities (as defined in section
21 475(c)(2) without regard to the last sentence there-
22 of), real estate, commodities (as defined in section
23 475(e)(2)), or options or derivative contracts with
24 respect to securities (as so defined), real estate, or
25 commodities (as so defined).

1 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

3 “(A) IN GENERAL.—If—

4 “(i) a portion of an investment serv-
5 ices partnership interest is acquired on ac-
6 count of a contribution of invested capital,
7 and

8 “(ii) the partnership makes a reason-
9 able allocation of partnership items be-
10 tween the portion of the distributive share
11 that is with respect to invested capital and
12 the portion of such distributive share that
13 is not with respect to invested capital,

14 then subsection (a) shall not apply to the por-
15 tion of the distributive share that is with re-
16 spect to invested capital. An allocation will not
17 be treated as reasonable for purposes of this
18 subparagraph if such allocation would result in
19 the partnership allocating a greater portion of
20 income to invested capital than any other part-
21 ner not providing services would have been allo-
22 cated with respect to the same amount of in-
23 vested capital.

24 “(B) SPECIAL RULE FOR DISPOSITIONS.—

25 In any case to which subparagraph (A) applies,

1 subsection (b) shall not apply to any gain or
2 loss allocable to invested capital. The portion of
3 any gain or loss attributable to invested capital
4 is the proportion of such gain or loss which is
5 based on the distributive share of gain or loss
6 that would have been allocable to invested cap-
7 ital under subparagraph (A) if the partnership
8 sold all of its assets immediately before the dis-
9 position.

10 “(C) INVESTED CAPITAL.—For purposes
11 of this paragraph, the term ‘invested capital’
12 means, the fair market value at the time of con-
13 tribution of any money or other property con-
14 tributed to the partnership.

15 “(D) TREATMENT OF CERTAIN LOANS.—

16 “(i) PROCEEDS OF PARTNERSHIP
17 LOANS NOT TREATED AS INVESTED CAP-
18 ITAL OF SERVICE PROVIDING PARTNERS.—

19 For purposes of this paragraph, an invest-
20 ment services partnership interest shall not
21 be treated as acquired on account of a con-
22 tribution of invested capital to the extent
23 that such capital is attributable to the pro-
24 ceeds of any loan or other advance made or

1 guaranteed, directly or indirectly, by any
2 partner or the partnership.

3 “(ii) LOANS FROM NONSERVICE PRO-
4 VIDING PARTNERS TO THE PARTNERSHIP
5 TREATED AS INVESTED CAPITAL.—For
6 purposes of this paragraph, any loan or
7 other advance to the partnership made or
8 guaranteed, directly or indirectly, by a
9 partner not providing services to the part-
10 nership shall be treated as invested capital
11 of such partner and amounts of income
12 and loss treated as allocable to invested
13 capital shall be adjusted accordingly.

14 “(d) OTHER INCOME AND GAIN IN CONNECTION
15 WITH INVESTMENT MANAGEMENT SERVICES.—

16 “(1) IN GENERAL.—If—

17 “(A) a person performs (directly or indi-
18 rectly) investment management services for any
19 entity,

20 “(B) such person holds a disqualified in-
21 terest with respect to such entity, and

22 “(C) the value of such interest (or pay-
23 ments thereunder) is substantially related to
24 the amount of income or gain (whether or not
25 realized) from the assets with respect to which

1 the investment management services are per-
2 formed,
3 any income or gain with respect to such interest
4 shall be treated as ordinary income for the perform-
5 ance of services. Rules similar to the rules of sub-
6 section (c)(2) shall apply where such interest was ac-
7 quired on account of invested capital in such entity.

8 “(2) DEFINITIONS.—For purposes of this sub-
9 section—

10 “(A) DISQUALIFIED INTEREST.—The term
11 ‘disqualified interest’ means, with respect to
12 any entity—

13 “(i) any interest in such entity other
14 than indebtedness,

15 “(ii) convertible or contingent debt of
16 such entity,

17 “(iii) any option or other right to ac-
18 quire property described in clause (i) or
19 (ii), and

20 “(iv) any derivative instrument en-
21 tered into (directly or indirectly) with such
22 entity or any investor in such entity.

23 Such term shall not include a partnership inter-
24 est and shall not include stock in a taxable cor-
25 poration.

1 “(B) TAXABLE CORPORATION.—The term
2 ‘taxable corporation’ means—

3 “(i) a domestic C corporation, or

4 “(ii) a foreign corporation subject to a
5 comprehensive foreign income tax (as de-
6 fined in section 457A(d)(4)).

7 “(C) INVESTMENT MANAGEMENT SERV-
8 ICES.—The term ‘investment management serv-
9 ices’ means a substantial quantity of any of the
10 services described in subsection (c)(1) which are
11 provided in the conduct of the trade or business
12 of providing such services.

13 “(e) EXCEPTION.—This section shall not apply to an
14 investment services partnership interest for a taxable year
15 unless the aggregate net income from all such interests
16 for such year of the partner holding such interest exceeds
17 \$5,000,000.

18 “(f) REGULATIONS.—The Secretary shall prescribe
19 such regulations as are necessary or appropriate to carry
20 out the purposes of this section, including regulations to—

21 “(1) prevent the avoidance of the purposes of
22 this section, and

23 “(2) coordinate this section with the other pro-
24 visions of this subchapter.

1 “(g) CROSS REFERENCE.—For 40 percent no fault
2 penalty on certain underpayments due to the avoidance
3 of this section, see section 6662.”.

4 (b) APPLICATION TO REAL ESTATE INVESTMENT
5 TRUSTS.—Subsection (c) of section 856 of such Code is
6 amended by adding at the end the following new para-
7 graph:

8 “(8) EXCEPTION FROM RECHARACTERIZATION
9 OF INCOME FROM INVESTMENT SERVICES PARTNER-
10 SHIP INTERESTS.—

11 “(A) IN GENERAL.—Paragraphs (2), (3),
12 and (4) shall be applied without regard to sec-
13 tion 710 (relating to special rules for partners
14 providing investment management services to
15 partnership).

16 “(B) SPECIAL RULE FOR PARTNERSHIPS
17 OWNED BY REITS.—Section 7704 shall be ap-
18 plied without regard to section 710 in the case
19 of a partnership which meets each of the fol-
20 lowing requirements:

21 “(i) Such partnership is treated as
22 publicly traded under section 7704 solely
23 by reason of interests in such partnership
24 being convertible into interests in a real es-

1 tate investment trust which is publicly
2 traded.

3 “(ii) 50 percent or more of the capital
4 and profits interests of such partnership
5 are owned, directly or indirectly, at all
6 times during the taxable year by such real
7 estate investment trust (determined with
8 the application of section 267(e)).

9 “(iii) Such partnership meets the re-
10 quirements of paragraphs (2), (3), and (4)
11 (applied without regard to section 710).”.

12 (c) IMPOSITION OF PENALTY ON UNDERPAY-
13 MENTS.—

14 (1) IN GENERAL.—Subsection (b) of section
15 6662 of such Code is amended by inserting after
16 paragraph (5) the following new paragraph:

17 “(6) The application of subsection (d) of section
18 710 or the regulations prescribed under section
19 710(e) to prevent the avoidance of the purposes of
20 section 710.”.

21 (2) AMOUNT OF PENALTY.—

22 (A) IN GENERAL.—Section 6662 of such
23 Code is amended by adding at the end the fol-
24 lowing new subsection:

1 “(i) INCREASE IN PENALTY IN CASE OF PROPERTY
2 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
3 ICES.—In the case of any portion of an underpayment to
4 which this section applies by reason of subsection (b)(6),
5 subsection (a) shall be applied with respect to such portion
6 by substituting ‘40 percent’ for ‘20 percent’.”.

7 (B) CONFORMING AMENDMENTS.—Sub-
8 paragraph (B) of section 6662A(e)(2) of such
9 Code is amended—

10 (i) by striking “section 6662(h)” and
11 inserting “subsection (h) or (i) of section
12 6662”, and

13 (ii) by striking “GROSS VALUATION
14 MISSTATEMENT PENALTY” in the heading
15 and inserting “CERTAIN INCREASED UN-
16 DERPAYMENT PENALTIES”.

17 (3) REASONABLE CAUSE EXCEPTION NOT AP-
18 PLICABLE.—Subsection (c) of section 6664 of such
19 Code is amended—

20 (A) by redesignating paragraphs (2) and
21 (3) as paragraphs (3) and (4), respectively,

22 (B) by striking “paragraph (2)” in para-
23 graph (4), as so redesignated, and inserting
24 “paragraph (3)”, and

1 (C) by inserting after paragraph (1) the
2 following new paragraph:

3 “(2) EXCEPTION.—Paragraph (1) shall not
4 apply to any portion of an underpayment to which
5 this section applies by reason of subsection (b)(6).”.

6 (d) CONFORMING AMENDMENTS.—

7 (1) Subsection (d) of section 731 of such Code
8 is amended by inserting “section 710(b)(4) (relating
9 to distributions of partnership property),” before
10 “section 736”.

11 (2) Section 741 of such Code is amended by in-
12 serting “or section 710 (relating to special rules for
13 partners providing investment management services
14 to partnership)” before the period at the end.

15 (3) Paragraph (13) of section 1402(a) of such
16 Code is amended—

17 (A) by striking “other than guaranteed”
18 and inserting “other than—

19 “(A) guaranteed”,

20 (B) by striking the semi-colon at the end
21 and inserting “, and”, and

22 (C) by adding at the end the following new
23 subparagraph:

24 “(B) any income treated as ordinary in-
25 come under section 710 received by an indi-

1 vidual who provides investment management
2 services (as defined in section 710(d)(2));”.

3 (4) Paragraph (12) of section 211(a) of the So-
4 cial Security Act is amended—

5 (A) by striking “other than guaranteed”
6 and inserting “other than—

7 “(A) guaranteed”,

8 (B) by striking the semi-colon at the end
9 and inserting “, and”, and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(B) any income treated as ordinary in-
13 come under section 710 of the Internal Revenue
14 Code of 1986 received by an individual who
15 provides investment management services (as
16 defined in section 710(d)(2) of such Code);”.

17 (5) The table of sections for part I of sub-
18 chapter K of chapter 1 of such Code is amended by
19 adding at the end the following new item:

 “Sec. 710. Special rules for partners providing investment management services
 to partnership.”.

20 (e) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this subsection, the amendments made by
23 this section shall apply to taxable years ending after
24 the date of the enactment of this Act.

1 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
2 CLUDE EFFECTIVE DATE.—In applying section
3 710(a) of the Internal Revenue Code of 1986 (as
4 added by this section) in the case of any partnership
5 taxable year which includes the date of the enact-
6 ment of this Act, the amount of the net income re-
7 ferred to in such section shall be treated as being
8 the lesser of the net income for the entire partner-
9 ship taxable year or the net income determined by
10 only taking into account items attributable to the
11 portion of the partnership taxable year which is
12 after such date.

13 (3) DISPOSITIONS OF PARTNERSHIP INTER-
14 ESTS.—Except as provided in paragraph (3), section
15 710(b) of the Internal Revenue Code of 1986 (as
16 added by this section) shall apply to dispositions and
17 distributions after the date of the enactment of this
18 Act.

19 (4) OTHER INCOME AND GAIN IN CONNECTION
20 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
21 tion 710(d) of such Code (as added by this section)
22 shall take effect on the date of the enactment of this
23 Act.

1 **Subtitle B—Nonqualified Deferred**
2 **Compensation From Certain**
3 **Tax Indifferent Parties**

4 **SEC. 211. NONQUALIFIED DEFERRED COMPENSATION**
5 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

6 (a) IN GENERAL.—Subpart B of part II of sub-
7 chapter E of chapter 1 of the Internal Revenue Code of
8 1986 (relating to taxable year for which items of gross
9 income included) is amended by inserting after section 457
10 the following new section:

11 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**
12 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

13 “(a) IN GENERAL.—Any compensation which is de-
14 ferred under a nonqualified deferred compensation plan of
15 a nonqualified entity shall be taken into account for pur-
16 poses of this chapter when there is no substantial risk of
17 forfeiture of the rights to such compensation.

18 “(b) NONQUALIFIED ENTITY.—For purposes of this
19 section, the term ‘nonqualified entity’ means—

20 “(1) any foreign corporation unless substan-
21 tially all of such income is—

22 “(A) effectively connected with the conduct
23 of a trade or business in the United States, or

24 “(B) subject to a comprehensive foreign in-
25 come tax, and

1 “(2) any partnership unless substantially all of
2 such income is allocated to persons other than—

3 “(A) foreign persons with respect to whom
4 such income is not subject to a comprehensive
5 foreign income tax, and

6 “(B) organizations which are exempt from
7 tax under this title.

8 “(c) ASCERTAINABILITY OF AMOUNTS OF COM-
9 PENSATION.—

10 “(1) IN GENERAL.—If the amount of any com-
11 pensation is not ascertainable at the time that such
12 compensation is otherwise to be taken into account
13 under subsection (a)—

14 “(A) such amount shall be so taken into
15 account when ascertainable, and

16 “(B) the tax imposed under this chapter
17 for the taxable year in which such compensation
18 is taken into account under subparagraph (A)
19 shall be increased by the sum of—

20 “(i) the amount of interest determined
21 under paragraph (2), and

22 “(ii) an amount equal to 20 percent of
23 the amount of such compensation.

24 “(2) INTEREST.—For purposes of paragraph
25 (1)(B)(i), the interest determined under this para-

1 graph for any taxable year is the amount of interest
2 at the underpayment rate under section 6621 plus
3 1 percentage point on the underpayments that would
4 have occurred had the deferred compensation been
5 includible in gross income for the taxable year in
6 which first deferred or, if later, the first taxable year
7 in which such deferred compensation is not subject
8 to a substantial risk of forfeiture.

9 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

10 For purposes of this section—

11 “(1) SUBSTANTIAL RISK OF FORFEITURE.—The
12 rights of a person to compensation shall be treated
13 as subject to a substantial risk of forfeiture only if
14 such person’s rights to such compensation are condi-
15 tioned upon the future performance of substantial
16 services by any individual.

17 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—

18 The term ‘comprehensive foreign income tax’ means,
19 with respect to any foreign person, the income tax
20 of a foreign country if—

21 “(A) such person is eligible for the benefits
22 of a comprehensive income tax treaty between
23 such foreign country and the United States, or

1 “(B) such person demonstrates to the sat-
2 isfaction of the Secretary that such foreign
3 country has a comprehensive income tax.

4 Such term shall not include any tax unless such tax
5 includes rules for the deductibility of deferred com-
6 pensation which are similar to the rules of this title.

7 “(3) NONQUALIFIED DEFERRED COMPENSA-
8 TION PLAN.—The term ‘nonqualified deferred com-
9 pensation plan’ has the meaning given such term
10 under section 409A(d), except that such term shall
11 include any plan that provides a right to compensa-
12 tion based on the appreciation in value of a specified
13 number of equity units of the service recipient.

14 “(4) APPLICATION OF RULES.—Rules similar to
15 the rules of paragraphs (5) and (6) of section
16 409A(d) shall apply.

17 “(e) REGULATIONS.—The Secretary shall prescribe
18 such regulations as may be necessary or appropriate to
19 carry out the purposes of this section, including regula-
20 tions disregarding a substantial risk of forfeiture in cases
21 where necessary to carry out the purposes of this sec-
22 tion.”.

23 (b) CONFORMING AMENDMENT.—Section 26(b)(2) of
24 such Code is amended by striking “and” at the end of
25 subparagraph (S), by striking the period at the end of sub-

1 paragraph (T) and inserting “, and”, and by adding at
2 the end the following new subparagraph:

3 “(U) section 457A(c)(1)(B) (relating to as-
4 certainability of amounts of compensation).”.

5 (c) CLERICAL AMENDMENT.—The table of sections
6 of subpart B of part II of subchapter E of chapter 1 of
7 such Code is amended by inserting after the item relating
8 to section 457 the following new item:

“Sec. 457A. Nonqualified deferred compensation from certain tax indifferent
parties.”.

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as otherwise pro-
11 vided in this subsection, the amendments made by
12 this section shall apply to amounts deferred which
13 are attributable to services performed after Decem-
14 ber 31, 2007.

15 (2) APPLICATION TO EXISTING DEFERRALS.—
16 In the case of any amount deferred to which the
17 amendments made by this section do not apply solely
18 by reason of the fact that the amount is attributable
19 to services performed before January 1, 2008, to the
20 extent such amount is not includible in gross income
21 in a taxable year beginning before 2017, such
22 amounts shall be includible in gross income in the
23 later of—

1 (A) the last taxable year beginning before
2 2017, or

3 (B) the taxable year in which there is no
4 substantial risk of forfeiture of the rights to
5 such compensation (determined in the same
6 manner as determined for purposes of section
7 457A of the Internal Revenue Code of 1986, as
8 added by this section).

9 (3) ACCELERATED PAYMENTS.—No later than
10 60 days after the date of the enactment of this Act,
11 the Secretary shall issue guidance providing a lim-
12 ited period of time during which a nonqualified de-
13 ferred compensation arrangement attributable to
14 services performed on or before December 31, 2007,
15 may, without violating the requirements of section
16 409A(a) of the Internal Revenue Code of 1986, be
17 amended to conform the date of distribution to the
18 date the amounts are required to be included in in-
19 come.

1 **Subtitle C—Provisions Related to**
2 **Certain Investment Partnerships**

3 **SEC. 221. INCOME OF PARTNERS FOR PERFORMING IN-**
4 **VESTMENT MANAGEMENT SERVICES TREAT-**
5 **ED AS ORDINARY INCOME RECEIVED FOR**
6 **PERFORMANCE OF SERVICES.**

7 (a) IN GENERAL.—Part I of subchapter K of chapter
8 1 of the Internal Revenue Code of 1986 is amended by
9 adding at the end the following new section:

10 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
11 **VESTMENT MANAGEMENT SERVICES TO**
12 **PARTNERSHIP.**

13 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
14 PARTNERSHIP ITEMS.—For purposes of this title, in the
15 case of an investment services partnership interest—

16 “(1) IN GENERAL.—Notwithstanding section
17 702(b)—

18 “(A) any net income with respect to such
19 interest for any partnership taxable year shall
20 be treated as ordinary income for the perform-
21 ance of services, and

22 “(B) any net loss with respect to such in-
23 terest for such year, to the extent not dis-
24 allowed under paragraph (2) for such year,
25 shall be treated as an ordinary loss.

1 “(2) TREATMENT OF LOSSES.—

2 “(A) LIMITATION.—Any net loss with re-
3 spect to such interest shall be allowed for any
4 partnership taxable year only to the extent that
5 such loss does not exceed the excess (if any)
6 of—

7 “(i) the aggregate net income with re-
8 spect to such interest for all prior partner-
9 ship taxable years, over

10 “(ii) the aggregate net loss with re-
11 spect to such interest not disallowed under
12 this subparagraph for all prior partnership
13 taxable years.

14 “(B) CARRYFORWARD.—Any net loss for
15 any partnership taxable year which is not al-
16 lowed by reason of subparagraph (A) shall be
17 treated as an item of loss with respect to such
18 partnership interest for the succeeding partner-
19 ship taxable year.

20 “(C) BASIS ADJUSTMENT.—No adjustment
21 to the basis of a partnership interest shall be
22 made on account of any net loss which is not
23 allowed by reason of subparagraph (A).

24 “(D) EXCEPTION FOR BASIS ATTRIB-
25 UTABLE TO PURCHASE OF A PARTNERSHIP IN-

1 TEREST.—In the case of an investment services
2 partnership interest acquired by purchase, para-
3 graph (1)(B) shall not apply to so much of any
4 net loss with respect to such interest for any
5 taxable year as does not exceed the excess of—

6 “(i) the basis of such interest imme-
7 diately after such purchase, over

8 “(ii) the aggregate net loss with re-
9 spect to such interest to which paragraph
10 (1)(B) did not apply by reason of this sub-
11 paragraph for all prior taxable years.

12 Any net loss to which paragraph (1)(B) does
13 not apply by reason of this subparagraph shall
14 not be taken into account under subparagraph
15 (A).

16 “(E) PRIOR PARTNERSHIP YEARS.—Any
17 reference in this paragraph to prior partnership
18 taxable years shall only include prior partner-
19 ship taxable years to which this section applies.

20 “(3) NET INCOME AND LOSS.—For purposes of
21 this section—

22 “(A) NET INCOME.—The term ‘net in-
23 come’ means, with respect to any investment
24 services partnership interest, for any partner-
25 ship taxable year, the excess (if any) of—

1 “(i) all items of income and gain
2 taken into account by the holder of such
3 interest under section 702 with respect to
4 such interest for such year, over

5 “(ii) all items of deduction and loss so
6 taken into account.

7 “(B) NET LOSS.—The term ‘net loss’
8 means with respect to such interest for such
9 year, the excess (if any) of the amount de-
10 scribed in subparagraph (A)(ii) over the amount
11 described in subparagraph (A)(i).

12 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

13 “(1) GAIN.—Any gain on the disposition of an
14 investment services partnership interest shall be
15 treated as ordinary income for the performance of
16 services.

17 “(2) LOSS.—Any loss on the disposition of an
18 investment services partnership interest shall be
19 treated as an ordinary loss to the extent of the ex-
20 cess (if any) of—

21 “(A) the aggregate net income with respect
22 to such interest for all partnership taxable
23 years, over

1 “(B) the aggregate net loss with respect to
2 such interest allowed under subsection (a)(2)
3 for all partnership taxable years.

4 “(3) DISPOSITION OF PORTION OF INTEREST.—
5 In the case of any disposition of an investment serv-
6 ices partnership interest, the amount of net loss
7 which otherwise would have (but for subsection
8 (a)(2)(C)) applied to reduce the basis of such inter-
9 est shall be disregarded for purposes of this section
10 for all succeeding partnership taxable years.

11 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
12 ERTY.—In the case of any distribution of appre-
13 ciated property by a partnership with respect to any
14 investment services partnership interest, gain shall
15 be recognized by the partnership in the same man-
16 ner as if the partnership sold such property at fair
17 market value at the time of the distribution. For
18 purposes of this paragraph, the term ‘appreciated
19 property’ means any property with respect to which
20 gain would be determined if sold as described in the
21 preceding sentence.

22 “(5) APPLICATION OF SECTION 751.—In apply-
23 ing section 751(a), an investment services partner-
24 ship interest shall be treated as an inventory item.

1 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
2 EST.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘investment serv-
4 ices partnership interest’ means any interest in a
5 partnership which is held by any person if such per-
6 son provides (directly or indirectly) a substantial
7 quantity of any of the following services with respect
8 to the assets of the partnership in the conduct of the
9 trade or business of providing such services:

10 “(A) Advising as to the advisability of in-
11 vesting in, purchasing, or selling any specified
12 asset.

13 “(B) Managing, acquiring, or disposing of
14 any specified asset.

15 “(C) Arranging financing with respect to
16 acquiring specified assets.

17 “(D) Any activity in support of any service
18 described in subparagraphs (A) through (C).

19 For purposes of this paragraph, the term ‘specified
20 asset’ means securities (as defined in section
21 475(c)(2) without regard to the last sentence there-
22 of), real estate, commodities (as defined in section
23 475(e)(2))), or options or derivative contracts with
24 respect to securities (as so defined), real estate, or
25 commodities (as so defined).

1 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

3 “(A) IN GENERAL.—If—

4 “(i) a portion of an investment serv-
5 ices partnership interest is acquired on ac-
6 count of a contribution of invested capital,
7 and

8 “(ii) the partnership makes a reason-
9 able allocation of partnership items be-
10 tween the portion of the distributive share
11 that is with respect to invested capital and
12 the portion of such distributive share that
13 is not with respect to invested capital,

14 then subsection (a) shall not apply to the por-
15 tion of the distributive share that is with re-
16 spect to invested capital. An allocation will not
17 be treated as reasonable for purposes of this
18 subparagraph if such allocation would result in
19 the partnership allocating a greater portion of
20 income to invested capital than any other part-
21 ner not providing services would have been allo-
22 cated with respect to the same amount of in-
23 vested capital.

24 “(B) SPECIAL RULE FOR DISPOSITIONS.—

25 In any case to which subparagraph (A) applies,

1 subsection (b) shall not apply to any gain or
2 loss allocable to invested capital. The portion of
3 any gain or loss attributable to invested capital
4 is the proportion of such gain or loss which is
5 based on the distributive share of gain or loss
6 that would have been allocable to invested cap-
7 ital under subparagraph (A) if the partnership
8 sold all of its assets immediately before the dis-
9 position.

10 “(C) INVESTED CAPITAL.—For purposes
11 of this paragraph, the term ‘invested capital’
12 means, the fair market value at the time of con-
13 tribution of any money or other property con-
14 tributed to the partnership.

15 “(D) TREATMENT OF CERTAIN LOANS.—

16 “(i) PROCEEDS OF PARTNERSHIP
17 LOANS NOT TREATED AS INVESTED CAP-
18 ITAL OF SERVICE PROVIDING PARTNERS.—

19 For purposes of this paragraph, an invest-
20 ment services partnership interest shall not
21 be treated as acquired on account of a con-
22 tribution of invested capital to the extent
23 that such capital is attributable to the pro-
24 ceeds of any loan or other advance made or

1 guaranteed, directly or indirectly, by any
2 partner or the partnership.

3 “(ii) LOANS FROM NONSERVICE PRO-
4 VIDING PARTNERS TO THE PARTNERSHIP
5 TREATED AS INVESTED CAPITAL.—For
6 purposes of this paragraph, any loan or
7 other advance to the partnership made or
8 guaranteed, directly or indirectly, by a
9 partner not providing services to the part-
10 nership shall be treated as invested capital
11 of such partner and amounts of income
12 and loss treated as allocable to invested
13 capital shall be adjusted accordingly.

14 “(d) OTHER INCOME AND GAIN IN CONNECTION
15 WITH INVESTMENT MANAGEMENT SERVICES.—

16 “(1) IN GENERAL.—If—

17 “(A) a person performs (directly or indi-
18 rectly) investment management services for any
19 entity,

20 “(B) such person holds a disqualified in-
21 terest with respect to such entity, and

22 “(C) the value of such interest (or pay-
23 ments thereunder) is substantially related to
24 the amount of income or gain (whether or not
25 realized) from the assets with respect to which

1 the investment management services are per-
2 formed,
3 any income or gain with respect to such interest
4 shall be treated as ordinary income for the perform-
5 ance of services. Rules similar to the rules of sub-
6 section (c)(2) shall apply where such interest was ac-
7 quired on account of invested capital in such entity.

8 “(2) DEFINITIONS.—For purposes of this sub-
9 section—

10 “(A) DISQUALIFIED INTEREST.—The term
11 ‘disqualified interest’ means, with respect to
12 any entity—

13 “(i) any interest in such entity other
14 than indebtedness,

15 “(ii) convertible or contingent debt of
16 such entity,

17 “(iii) any option or other right to ac-
18 quire property described in clause (i) or
19 (ii), and

20 “(iv) any derivative instrument en-
21 tered into (directly or indirectly) with such
22 entity or any investor in such entity.

23 Such term shall not include a partnership inter-
24 est and shall not include stock in a taxable cor-
25 poration.

1 “(B) TAXABLE CORPORATION.—The term
2 ‘taxable corporation’ means—

3 “(i) a domestic C corporation, or

4 “(ii) a foreign corporation subject to a
5 comprehensive foreign income tax (as de-
6 fined in section 457A(d)(4)).

7 “(C) INVESTMENT MANAGEMENT SERV-
8 ICES.—The term ‘investment management serv-
9 ices’ means a substantial quantity of any of the
10 services described in subsection (c)(1) which are
11 provided in the conduct of the trade or business
12 of providing such services.

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 such regulations as are necessary or appropriate to carry
15 out the purposes of this section, including regulations to—

16 “(1) prevent the avoidance of the purposes of
17 this section, and

18 “(2) coordinate this section with the other pro-
19 visions of this subchapter.

20 “(f) CROSS REFERENCE.—For 40 percent no fault
21 penalty on certain underpayments due to the avoidance
22 of this section, see section 6662.”.

23 (b) APPLICATION TO REAL ESTATE INVESTMENT
24 TRUSTS.—Subsection (c) of section 856 of such Code is

1 amended by adding at the end the following new para-
2 graph:

3 “(8) EXCEPTION FROM RECHARACTERIZATION
4 OF INCOME FROM INVESTMENT SERVICES PARTNER-
5 SHIP INTERESTS.—

6 “(A) IN GENERAL.—Paragraphs (2), (3),
7 and (4) shall be applied without regard to sec-
8 tion 710 (relating to special rules for partners
9 providing investment management services to
10 partnership).

11 “(B) SPECIAL RULE FOR PARTNERSHIPS
12 OWNED BY REITS.—Section 7704 shall be ap-
13 plied without regard to section 710 in the case
14 of a partnership which meets each of the fol-
15 lowing requirements:

16 “(i) Such partnership is treated as
17 publicly traded under section 7704 solely
18 by reason of interests in such partnership
19 being convertible into interests in a real es-
20 tate investment trust which is publicly
21 traded.

22 “(ii) 50 percent or more of the capital
23 and profits interests of such partnership
24 are owned, directly or indirectly, at all
25 times during the taxable year by such real

1 estate investment trust (determined with
2 the application of section 267(e)).

3 “(iii) Such partnership meets the re-
4 quirements of paragraphs (2), (3), and (4)
5 (applied without regard to section 710).”.

6 (c) IMPOSITION OF PENALTY ON UNDERPAY-
7 MENTS.—

8 (1) IN GENERAL.—Subsection (b) of section
9 6662 of such Code is amended by inserting after
10 paragraph (5) the following new paragraph:

11 “(6) The application of subsection (d) of section
12 710 or the regulations prescribed under section
13 710(e) to prevent the avoidance of the purposes of
14 section 710.”.

15 (2) AMOUNT OF PENALTY.—

16 (A) IN GENERAL.—Section 6662 of such
17 Code is amended by adding at the end the fol-
18 lowing new subsection:

19 “(i) INCREASE IN PENALTY IN CASE OF PROPERTY
20 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
21 ICES.—In the case of any portion of an underpayment to
22 which this section applies by reason of subsection (b)(6),
23 subsection (a) shall be applied with respect to such portion
24 by substituting ‘40 percent’ for ‘20 percent’.”.

1 (B) CONFORMING AMENDMENTS.—Sub-
2 paragraph (B) of section 6662A(e)(2) of such
3 Code is amended—

4 (i) by striking “section 6662(h)” and
5 inserting “subsection (h) or (i) of section
6 6662”, and

7 (ii) by striking “GROSS VALUATION
8 MISSTATEMENT PENALTY” in the heading
9 and inserting “CERTAIN INCREASED UN-
10 DERPAYMENT PENALTIES”.

11 (3) REASONABLE CAUSE EXCEPTION NOT AP-
12 PPLICABLE.—Subsection (c) of section 6664 of such
13 Code is amended—

14 (A) by redesignating paragraphs (2) and
15 (3) as paragraphs (3) and (4), respectively,

16 (B) by striking “paragraph (2)” in para-
17 graph (4), as so redesignated, and inserting
18 “paragraph (3)”, and

19 (C) by inserting after paragraph (1) the
20 following new paragraph:

21 “(2) EXCEPTION.—Paragraph (1) shall not
22 apply to any portion of an underpayment to which
23 this section applies by reason of subsection (b)(6).”.

24 (d) CONFORMING AMENDMENTS.—

1 (1) Subsection (d) of section 731 of such Code
2 is amended by inserting “section 710(b)(4) (relating
3 to distributions of partnership property),” before
4 “section 736”.

5 (2) Section 741 of such Code is amended by in-
6 serting “or section 710 (relating to special rules for
7 partners providing investment management services
8 to partnership)” before the period at the end.

9 (3) Paragraph (13) of section 1402(a) of such
10 Code is amended—

11 (A) by striking “other than guaranteed”
12 and inserting “other than—

13 “(A) guaranteed”,

14 (B) by striking the semi-colon at the end
15 and inserting “, and”, and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(B) any income treated as ordinary in-
19 come under section 710 received by an indi-
20 vidual who provides investment management
21 services (as defined in section 710(d)(2));”.

22 (4) Paragraph (12) of section 211(a) of the So-
23 cial Security Act is amended—

24 (A) by striking “other than guaranteed”
25 and inserting “other than—

1 “(A) guaranteed”,

2 (B) by striking the semi-colon at the end
3 and inserting “, and”, and

4 (C) by adding at the end the following new
5 subparagraph:

6 “(B) any income treated as ordinary in-
7 come under section 710 of the Internal Revenue
8 Code of 1986 received by an individual who
9 provides investment management services (as
10 defined in section 710(d)(2) of such Code);”.

11 (5) The table of sections for part I of sub-
12 chapter K of chapter 1 of such Code is amended by
13 adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services
to partnership.”.

14 (e) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, the amendments made by
17 this section shall apply to taxable years ending after
18 November 1, 2007.

19 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
20 CLUDE EFFECTIVE DATE.—In applying section
21 710(a) of the Internal Revenue Code of 1986 (as
22 added by this section) in the case of any partnership
23 taxable year which includes November 1, 2007, the
24 amount of the net income referred to in such section

1 shall be treated as being the lesser of the net income
2 for the entire partnership taxable year or the net in-
3 come determined by only taking into account items
4 attributable to the portion of the partnership taxable
5 year which is after such date.

6 (3) DISPOSITIONS OF PARTNERSHIP INTER-
7 ESTS.—Section 710(b) of the Internal Revenue Code
8 of 1986 (as added by this section) shall apply to dis-
9 positions and distributions after November 1, 2007.

10 (4) OTHER INCOME AND GAIN IN CONNECTION
11 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
12 tion 710(d) of such Code (as added by this section)
13 shall take effect on November 1, 2007.

14 (5) PUBLICLY TRADED PARTNERSHIPS.—For
15 purposes of applying section 7704, the amendments
16 made by this section shall apply to taxable years be-
17 ginning after December 31, 2009.

18 **SEC. 222. INDEBTEDNESS INCURRED BY A PARTNERSHIP IN**
19 **ACQUIRING SECURITIES AND COMMODITIES**
20 **NOT TREATED AS ACQUISITION INDEBTED-**
21 **NESS FOR ORGANIZATIONS WHICH ARE**
22 **PARTNERS WITH LIMITED LIABILITY.**

23 (a) IN GENERAL.—Subsection (c) of section 514 of
24 the Internal Revenue Code of 1986 (relating to acquisition

1 indebtedness) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(10) SECURITIES AND COMMODITIES AC-
4 QUIRED BY PARTNERSHIPS IN WHICH AN ORGANIZA-
5 TION IS A PARTNER WITH LIMITED LIABILITY.—

6 “(A) IN GENERAL.—In the case of any or-
7 ganization which is a partner with limited liabil-
8 ity in a partnership, the term ‘acquisition in-
9 debtedness’ does not, for purposes of this sec-
10 tion, include indebtedness incurred or continued
11 by such partnership in purchasing or carrying
12 any qualified security or commodity.

13 “(B) QUALIFIED SECURITY OR COM-
14 MODITY.—For purposes of this paragraph, the
15 term ‘qualified security or commodity’ means
16 any security (as defined in section 475(e)(2)
17 without regard to the last sentence thereof),
18 any commodity (as defined in section
19 475(e)(2)), or any option or derivative contract
20 with respect to such a security or commodity.

21 “(C) APPLICATION TO TIERED PARTNER-
22 SHIPS AND OTHER PASS-THRU ENTITIES.—
23 Rules similar to the rules of subparagraph (A)
24 shall apply in the case of tiered partnerships
25 and other pass-thru entities.

1 “(D) REGULATIONS.—The Secretary may
2 prescribe such regulations as may be necessary
3 or appropriate to carry out the purposes of this
4 paragraph, including regulations to prevent the
5 abuse of this paragraph.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to taxable years beginning after
8 the date of the enactment of this Act.

9 **SEC. 223. APPLICATION TO PARTNERSHIP INTERESTS AND**
10 **TAX SHARING AGREEMENTS OF RULE TREAT-**
11 **ING CERTAIN GAIN ON SALES BETWEEN RE-**
12 **LATED PERSONS AS ORDINARY INCOME.**

13 (a) PARTNERSHIP INTERESTS.—Subsection (a) of
14 section 1239 of the Internal Revenue Code of 1986 is
15 amended to read as follows:

16 “(a) TREATMENT OF GAIN AS ORDINARY INCOME.—
17 In the case of a sale or exchange of property, directly or
18 indirectly, between related persons, any gain recognized to
19 the transferor shall be treated as ordinary income if—

20 “(1) such property is, in the hands of the trans-
21 feree, of a character which is subject to the allow-
22 ance for depreciation provided in section 167, or

23 “(2) such property is an interest in a partner-
24 ship, but only to the extent of gain attributable to
25 unrealized appreciation in property which is of a

1 character subject to the allowance for depreciation
2 provided in section 167.”.

3 (b) TAX SHARING AGREEMENTS.—Section 1239 of
4 such Code (relating to gain from sale of depreciable prop-
5 erty between certain related taxpayers) is amended by
6 adding at the end the following new subsection:

7 “(f) APPLICATION TO TAX SHARING AGREE-
8 MENTS.—

9 “(1) IN GENERAL.—If there is a tax sharing
10 agreement with respect to any sale or exchange, the
11 transferee and the transferor shall be treated as re-
12 lated persons for purposes of this section.

13 “(2) TAX SHARING AGREEMENT.—For purposes
14 of this subsection, the term ‘tax sharing agreement’
15 means any agreement which provides for the pay-
16 ment to the transferor of any amount which is deter-
17 mined by reference to any portion of the tax benefit
18 realized by the transferee with respect to the depre-
19 ciation (or amortization) of the property trans-
20 ferred.”.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 shall apply to sales and exchanges after the date of
25 the enactment of this Act.

1 (2) EXCEPTION FOR BINDING CONTRACTS.—
2 The amendment made by subsection (b) shall not
3 apply to any sale or exchange pursuant to a written
4 binding contract which includes a tax sharing agree-
5 ment and which is in effect on November 1, 2007,
6 and not modified thereafter in any material respect.

7 **TITLE III—INCREASE OUR**
8 **ENERGY CAPACITY**
9 **Subtitle A—Refineries**

10 **SEC. 301. SHORT TITLE.**

11 This subtitle may be cited as the “Refinery Permit
12 Process Schedule Act”.

13 **SEC. 302. DEFINITIONS.**

14 For purposes of this subtitle—

15 (1) the term “Administrator” means the Ad-
16 ministrador of the Environmental Protection Agency;

17 (2) the term “applicant” means a person who
18 is seeking a Federal refinery authorization;

19 (3) the term “biomass” has the meaning given
20 that term in section 932(a)(1) of the Energy Policy
21 Act of 2005;

22 (4) the term “Federal refinery authorization”—
23 (A) means any authorization required
24 under Federal law, whether administered by a
25 Federal or State administrative agency or offi-

1 cial, with respect to siting, construction, expansion,
2 sion, or operation of a refinery; and

3 (B) includes any permits, licenses, special
4 use authorizations, certifications, opinions, or
5 other approvals required under Federal law
6 with respect to siting, construction, expansion,
7 or operation of a refinery;

8 (5) the term “refinery” means—

9 (A) a facility designed and operated to re-
10 ceive, load, unload, store, transport, process,
11 and refine crude oil by any chemical or physical
12 process, including distillation, fluid catalytic
13 cracking, hydrocracking, coking, alkylation,
14 etherification, polymerization, catalytic reform-
15 ing, isomerization, hydrotreating, blending, and
16 any combination thereof, in order to produce
17 gasoline or distillate;

18 (B) a facility designed and operated to re-
19 ceive, load, unload, store, transport, process,
20 and refine coal by any chemical or physical
21 process, including liquefaction, in order to
22 produce gasoline or diesel as its primary out-
23 put; or

24 (C) a facility designed and operated to re-
25 ceive, load, unload, store, transport, process (in-

1 including biochemical, photochemical, and bio-
2 technology processes), and refine biomass in
3 order to produce biofuel; and

4 (6) the term “State” means a State, the Dis-
5 trict of Columbia, the Commonwealth of Puerto
6 Rico, and any other territory or possession of the
7 United States.

8 **SEC. 303. STATE ASSISTANCE.**

9 (a) STATE ASSISTANCE.—At the request of a gov-
10 ernor of a State, the Administrator is authorized to pro-
11 vide financial assistance to that State to facilitate the hir-
12 ing of additional personnel to assist the State with exper-
13 tise in fields relevant to consideration of Federal refinery
14 authorizations.

15 (b) OTHER ASSISTANCE.—At the request of a gov-
16 ernor of a State, a Federal agency responsible for a Fed-
17 eral refinery authorization shall provide technical, legal,
18 or other nonfinancial assistance to that State to facilitate
19 its consideration of Federal refinery authorizations.

20 **SEC. 304. REFINERY PROCESS COORDINATION AND PROCE-**
21 **DURES.**

22 (a) APPOINTMENT OF FEDERAL COORDINATOR.—

23 (1) IN GENERAL.—The President shall appoint
24 a Federal coordinator to perform the responsibilities

1 assigned to the Federal coordinator under this sub-
2 title.

3 (2) OTHER AGENCIES.—Each Federal and
4 State agency or official required to provide a Fed-
5 eral refinery authorization shall cooperate with the
6 Federal coordinator.

7 (b) FEDERAL REFINERY AUTHORIZATIONS.—

8 (1) MEETING PARTICIPANTS.—Not later than
9 30 days after receiving a notification from an appli-
10 cant that the applicant is seeking a Federal refinery
11 authorization pursuant to Federal law, the Federal
12 coordinator appointed under subsection (a) shall
13 convene a meeting of representatives from all Fed-
14 eral and State agencies responsible for a Federal re-
15 finery authorization with respect to the refinery. The
16 governor of a State shall identify each agency of
17 that State that is responsible for a Federal refinery
18 authorization with respect to that refinery.

19 (2) MEMORANDUM OF AGREEMENT.—(A) Not
20 later than 90 days after receipt of a notification de-
21 scribed in paragraph (1), the Federal coordinator
22 and the other participants at a meeting convened
23 under paragraph (1) shall establish a memorandum
24 of agreement setting forth the most expeditious co-
25 ordinated schedule possible for completion of all

1 Federal refinery authorizations with respect to the
2 refinery, consistent with the full substantive and
3 procedural review required by Federal law. If a Fed-
4 eral or State agency responsible for a Federal refin-
5 ery authorization with respect to the refinery is not
6 represented at such meeting, the Federal coordinator
7 shall ensure that the schedule accommodates those
8 Federal refinery authorizations, consistent with Fed-
9 eral law. In the event of conflict among Federal re-
10 finery authorization scheduling requirements, the re-
11 quirements of the Environmental Protection Agency
12 shall be given priority.

13 (B) Not later than 15 days after completing the
14 memorandum of agreement, the Federal coordinator
15 shall publish the memorandum of agreement in the
16 Federal Register.

17 (C) The Federal coordinator shall ensure that
18 all parties to the memorandum of agreement are
19 working in good faith to carry out the memorandum
20 of agreement, and shall facilitate the maintenance of
21 the schedule established therein.

22 (c) CONSOLIDATED RECORD.—The Federal coordi-
23 nator shall, with the cooperation of Federal and State ad-
24 ministrative agencies and officials, maintain a complete
25 consolidated record of all decisions made or actions taken

1 by the Federal coordinator or by a Federal administrative
2 agency or officer (or State administrative agency or officer
3 acting under delegated Federal authority) with respect to
4 any Federal refinery authorization. Such record shall be
5 the record for judicial review under subsection (d) of deci-
6 sions made or actions taken by Federal and State adminis-
7 trative agencies and officials, except that, if the Court de-
8 termines that the record does not contain sufficient infor-
9 mation, the Court may remand the proceeding to the Fed-
10 eral coordinator for further development of the consoli-
11 dated record.

12 (d) REMEDIES.—

13 (1) IN GENERAL.—The United States District
14 Court for the district in which the proposed refinery
15 is located shall have exclusive jurisdiction over any
16 civil action for the review of the failure of an agency
17 or official to act on a Federal refinery authorization
18 in accordance with the schedule established pursuant
19 to the memorandum of agreement.

20 (2) STANDING.—If an applicant or a party to
21 a memorandum of agreement alleges that a failure
22 to act described in paragraph (1) has occurred and
23 that such failure to act would jeopardize timely com-
24 pletion of the entire schedule as established in the
25 memorandum of agreement, such applicant or other

1 party may bring a cause of action under this sub-
2 section.

3 (3) COURT ACTION.—If an action is brought
4 under paragraph (2), the Court shall review whether
5 the parties to the memorandum of agreement have
6 been acting in good faith, whether the applicant has
7 been cooperating fully with the agencies that are re-
8 sponsible for issuing a Federal refinery authoriza-
9 tion, and any other relevant materials in the consoli-
10 dated record. Taking into consideration those fac-
11 tors, if the Court finds that a failure to act de-
12 scribed in paragraph (1) has occurred, and that such
13 failure to act would jeopardize timely completion of
14 the entire schedule as established in the memo-
15 randum of agreement, the Court shall establish a
16 new schedule that is the most expeditious coordi-
17 nated schedule possible for completion of pro-
18 ceedings, consistent with the full substantive and
19 procedural review required by Federal law. The
20 court may issue orders to enforce any schedule it es-
21 tablishes under this paragraph.

22 (4) FEDERAL COORDINATOR'S ACTION.—When
23 any civil action is brought under this subsection, the
24 Federal coordinator shall immediately file with the

1 Court the consolidated record compiled by the Fed-
2 eral coordinator pursuant to subsection (c).

3 (5) EXPEDITED REVIEW.—The Court shall set
4 any civil action brought under this subsection for ex-
5 pedited consideration.

6 **SEC. 305. DESIGNATION OF CLOSED MILITARY BASES OR**
7 **OTHER FACILITIES.**

8 (a) DESIGNATION REQUIREMENT.—Not later than
9 90 days after the date of enactment of this Act, the Presi-
10 dent shall designate no less than 3 closed military installa-
11 tions or other closed government-owned facilities, or por-
12 tions thereof, as potentially suitable for the construction
13 of a refinery. At least 1 such site shall be designated as
14 potentially suitable for construction of a refinery to refine
15 biomass in order to produce biofuel.

16 (b) REDEVELOPMENT AUTHORITY.—The redevelop-
17 ment authority for each installation or facility designated
18 under subsection (a), in preparing or revising the redevelop-
19 ment plan for the installation or facility, shall consider
20 the feasibility and practicability of siting a refinery on the
21 installation or facility.

22 (c) MANAGEMENT AND DISPOSAL OF REAL PROP-
23 erty.—The relevant Secretary, in managing and dis-
24 posing of real property at an installation or facility des-
25 ignated under subsection (a), shall give substantial def-

1 erence to the recommendations of the redevelopment au-
2 thority, as contained in the redevelopment plan, regarding
3 the siting of a refinery on the installation or facility. The
4 management and disposal of real property at a closed mili-
5 tary installation or portion thereof found to be suitable
6 for the siting of a refinery under subsection (a) shall be
7 carried out in the manner provided by the base closure
8 law applicable to the installation.

9 (d) DEFINITIONS.—For purposes of this section—

10 (1) the term “base closure law” means the De-
11 fense Base Closure and Realignment Act of 1990
12 (part A of title XXIX of Public Law 101–510; 10
13 U.S.C. 2687 note) and title II of the Defense Au-
14 thorization Amendments and Base Closure and Re-
15 alignment Act (Public Law 100–526; 10 U.S.C.
16 2687 note);

17 (2) the term “closed military installation”
18 means a military installation closed or approved for
19 closure pursuant to a base closure law; and

20 (3) the term “closed government-owned facility”
21 means any government-owned facility (other than a
22 military installation) closed or approved for closure
23 under Federal law.

1 **SEC. 306. SAVINGS CLAUSE.**

2 Nothing in this subtitle shall be construed to affect
3 the application of any environmental or other law, or to
4 prevent any party from bringing a cause of action under
5 any environmental or other law, including citizen suits.

6 **SEC. 307. REFINERY REVITALIZATION REPEAL.**

7 Subtitle H of title III of the Energy Policy Act of
8 2005 and the items relating thereto in the table of con-
9 tents of such Act are repealed.

10 **Subtitle B—Oil and Gas Develop-**
11 **ment on the Coastal Plain of**
12 **Alaska**

13 **SEC. 311. DEFINITIONS.**

14 In this subtitle:

15 (1) **COASTAL PLAIN.**—The term “Coastal
16 Plain” means that area described in appendix I to
17 part 37 of title 50, Code of Federal Regulations.

18 (2) **SECRETARY.**—The term “Secretary”, except
19 as otherwise provided, means the Secretary of the
20 Interior or the Secretary’s designee.

21 **SEC. 312. LEASING PROGRAM FOR LANDS WITHIN THE**
22 **COASTAL PLAIN.**

23 (a) **IN GENERAL.**—The Secretary shall take such ac-
24 tions as are necessary—

25 (1) to establish and implement, in accordance
26 with this subtitle and acting through the Director of

1 the Bureau of Land Management in consultation
2 with the Director of the United States Fish and
3 Wildlife Service, a competitive oil and gas leasing
4 program that will result in an environmentally sound
5 program for the exploration, development, and pro-
6 duction of the oil and gas resources of the Coastal
7 Plain; and

8 (2) to administer the provisions of this subtitle
9 through regulations, lease terms, conditions, restric-
10 tions, prohibitions, stipulations, and other provisions
11 that ensure the oil and gas exploration, development,
12 and production activities on the Coastal Plain will
13 result in no significant adverse effect on fish and
14 wildlife, their habitat, subsistence resources, and the
15 environment, including, in furtherance of this goal,
16 by requiring the application of the best commercially
17 available technology for oil and gas exploration, de-
18 velopment, and production to all exploration, devel-
19 opment, and production operations under this sub-
20 title in a manner that ensures the receipt of fair
21 market value by the public for the mineral resources
22 to be leased.

23 (b) REPEAL.—

1 (1) REPEAL.—Section 1003 of the Alaska Na-
2 tional Interest Lands Conservation Act of 1980 (16
3 U.S.C. 3143) is repealed.

4 (2) CONFORMING AMENDMENT.—The table of
5 contents in section 1 of such Act is amended by
6 striking the item relating to section 1003.

7 (c) COMPLIANCE WITH REQUIREMENTS UNDER CER-
8 TAIN OTHER LAWS.—

9 (1) COMPATIBILITY.—For purposes of the Na-
10 tional Wildlife Refuge System Administration Act of
11 1966 (16 U.S.C. 668dd et seq.), the oil and gas
12 leasing program and activities authorized by this
13 section in the Coastal Plain are deemed to be com-
14 patible with the purposes for which the Arctic Na-
15 tional Wildlife Refuge was established, and no fur-
16 ther findings or decisions are required to implement
17 this determination.

18 (2) ADEQUACY OF THE DEPARTMENT OF THE
19 INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT
20 STATEMENT.—The “Final Legislative Environ-
21 mental Impact Statement” (April 1987) on the
22 Coastal Plain prepared pursuant to section 1002 of
23 the Alaska National Interest Lands Conservation
24 Act of 1980 (16 U.S.C. 3142) and section 102(2)(C)
25 of the National Environmental Policy Act of 1969

1 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the re-
2 quirements under the National Environmental Policy
3 Act of 1969 that apply with respect to prelease ac-
4 tivities, including actions authorized to be taken by
5 the Secretary to develop and promulgate the regula-
6 tions for the establishment of a leasing program au-
7 thorized by this subtitle before the conduct of the
8 first lease sale.

9 (3) COMPLIANCE WITH NEPA FOR OTHER AC-
10 TIONS.—Before conducting the first lease sale under
11 this subtitle, the Secretary shall prepare an environ-
12 mental impact statement under the National Envi-
13 ronmental Policy Act of 1969 with respect to the ac-
14 tions authorized by this subtitle that are not re-
15 ferred to in paragraph (2). Notwithstanding any
16 other law, the Secretary is not required to identify
17 nonleasing alternative courses of action or to analyze
18 the environmental effects of such courses of action.
19 The Secretary shall only identify a preferred action
20 for such leasing and a single leasing alternative, and
21 analyze the environmental effects and potential miti-
22 gation measures for those two alternatives. The
23 identification of the preferred action and related
24 analysis for the first lease sale under this subtitle
25 shall be completed within 18 months after the date

1 of enactment of this Act. The Secretary shall only
2 consider public comments that specifically address
3 the Secretary's preferred action and that are filed
4 within 20 days after publication of an environmental
5 analysis. Notwithstanding any other law, compliance
6 with this paragraph is deemed to satisfy all require-
7 ments for the analysis and consideration of the envi-
8 ronmental effects of proposed leasing under this sub-
9 title.

10 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-
11 ITY.—Nothing in this subtitle shall be considered to ex-
12 pand or limit State and local regulatory authority.

13 (e) SPECIAL AREAS.—

14 (1) IN GENERAL.—The Secretary, after con-
15 sultation with the State of Alaska, the city of
16 Kaktovik, and the North Slope Borough, may des-
17 ignate up to a total of 45,000 acres of the Coastal
18 Plain as a Special Area if the Secretary determines
19 that the Special Area is of such unique character
20 and interest so as to require special management
21 and regulatory protection. The Secretary shall des-
22 ignate as such a Special Area the Sadlerochit Spring
23 area, comprising approximately 4,000 acres.

24 (2) MANAGEMENT.—Each such Special Area
25 shall be managed so as to protect and preserve the

1 area's unique and diverse character including its
2 fish, wildlife, and subsistence resource values.

3 (3) EXCLUSION FROM LEASING OR SURFACE
4 OCCUPANCY.—The Secretary may exclude any Spe-
5 cial Area from leasing. If the Secretary leases a Spe-
6 cial Area, or any part thereof, for purposes of oil
7 and gas exploration, development, production, and
8 related activities, there shall be no surface occu-
9 pancy of the lands comprising the Special Area.

10 (4) DIRECTIONAL DRILLING.—Notwithstanding
11 the other provisions of this subsection, the Secretary
12 may lease all or a portion of a Special Area under
13 terms that permit the use of horizontal drilling tech-
14 nology from sites on leases located outside the Spe-
15 cial Area.

16 (f) LIMITATION ON CLOSED AREAS.—The Sec-
17 retary's sole authority to close lands within the Coastal
18 Plain to oil and gas leasing and to exploration, develop-
19 ment, and production is that set forth in this subtitle.

20 (g) REGULATIONS.—

21 (1) IN GENERAL.—The Secretary shall pre-
22 scribe such regulations as may be necessary to carry
23 out this subtitle, including rules and regulations re-
24 lating to protection of the fish and wildlife, their
25 habitat, subsistence resources, and environment of

1 the Coastal Plain, by no later than 15 months after
2 the date of enactment of this Act.

3 (2) REVISION OF REGULATIONS.—The Sec-
4 retary shall periodically review and, if appropriate,
5 revise the rules and regulations issued under sub-
6 section (a) to reflect any significant biological, envi-
7 ronmental, or engineering data that come to the Sec-
8 retary’s attention.

9 **SEC. 313. LEASE SALES.**

10 (a) IN GENERAL.—Lands may be leased pursuant to
11 this subtitle to any person qualified to obtain a lease for
12 deposits of oil and gas under the Mineral Leasing Act (30
13 U.S.C. 181 et seq.).

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

16 (1) receipt and consideration of sealed nomina-
17 tions for any area in the Coastal Plain for inclusion
18 in, or exclusion (as provided in subsection (c)) from,
19 a lease sale;

20 (2) the holding of lease sales after such nomina-
21 tion process; and

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

1 (c) LEASE SALE BIDS.—Bidding for leases under
2 this subtitle shall be by sealed competitive cash bonus bids.

3 (d) ACREAGE MINIMUM IN FIRST SALE.—In the first
4 lease sale under this subtitle, the Secretary shall offer for
5 lease those tracts the Secretary considers to have the
6 greatest potential for the discovery of hydrocarbons, tak-
7 ing into consideration nominations received pursuant to
8 subsection (b)(1), but in no case less than 200,000 acres.

9 (e) TIMING OF LEASE SALES.—The Secretary
10 shall—

11 (1) conduct the first lease sale under this sub-
12 title within 22 months after the date of the enact-
13 ment of this Act; and

14 (2) conduct additional sales so long as sufficient
15 interest in development exists to warrant, in the Sec-
16 retary's judgment, the conduct of such sales.

17 **SEC. 314. GRANT OF LEASES BY THE SECRETARY.**

18 (a) IN GENERAL.—The Secretary may grant to the
19 highest responsible qualified bidder in a lease sale con-
20 ducted pursuant to section 313 any lands to be leased on
21 the Coastal Plain upon payment by the lessee of such
22 bonus as may be accepted by the Secretary.

23 (b) SUBSEQUENT TRANSFERS.—No lease issued
24 under this subtitle may be sold, exchanged, assigned, sub-
25 let, or otherwise transferred except with the approval of

1 the Secretary. Prior to any such approval the Secretary
2 shall consult with, and give due consideration to the views
3 of, the Attorney General.

4 **SEC. 315. LEASE TERMS AND CONDITIONS.**

5 An oil or gas lease issued pursuant to this subtitle
6 shall—

7 (1) provide for the payment of a royalty of not
8 less than 12½ percent in amount or value of the
9 production removed or sold from the lease, as deter-
10 mined by the Secretary under the regulations appli-
11 cable to other Federal oil and gas leases;

12 (2) require that the lessee of lands within the
13 Coastal Plain shall be fully responsible and liable for
14 the reclamation of lands within the Coastal Plain
15 and any other Federal lands that are adversely af-
16 fected in connection with exploration, development,
17 production, or transportation activities conducted
18 under the lease and within the Coastal Plain by the
19 lessee or by any of the subcontractors or agents of
20 the lessee;

21 (3) provide that the lessee may not delegate or
22 convey, by contract or otherwise, the reclamation re-
23 sponsibility and liability to another person without
24 the express written approval of the Secretary;

1 (4) provide that the standard of reclamation for
2 lands required to be reclaimed under this subtitle
3 shall be, as nearly as practicable, a condition capable
4 of supporting the uses which the lands were capable
5 of supporting prior to any exploration, development,
6 or production activities, or upon application by the
7 lessee, to a higher or better use as approved by the
8 Secretary;

9 (5) include requirements and restrictions to
10 provide for reasonable protection of fish and wildlife,
11 their habitat, subsistence resources, and the environ-
12 ment as determined by the Secretary;

13 (6) prohibit the export of oil produced under
14 the lease; and

15 (7) contain such other provisions as the Sec-
16 retary determines necessary to ensure compliance
17 with the provisions of this subtitle and the regula-
18 tions issued under this subtitle.

19 **SEC. 316. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

20 (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD
21 TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—

22 The Secretary shall, consistent with the requirements of
23 section 312, administer the provisions of this subtitle
24 through regulations, lease terms, conditions, restrictions,
25 prohibitions, stipulations, and other provisions that—

1 (1) ensure the oil and gas exploration, develop-
2 ment, and production activities on the Coastal Plain
3 will result in no significant adverse effect on fish
4 and wildlife, their habitat, and the environment;

5 (2) require the application of the best commer-
6 cially available technology for oil and gas explo-
7 ration, development, and production on all new ex-
8 ploration, development, and production operations;
9 and

10 (3) ensure that the maximum amount of sur-
11 face acreage covered by production and support fa-
12 cilities, including airstrips and any areas covered by
13 gravel berms or piers for support of pipelines, does
14 not exceed 2,000 acres on the Coastal Plain.

15 (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—

16 The Secretary shall also require, with respect to any pro-
17 posed drilling and related activities, that—

18 (1) a site-specific analysis be made of the prob-
19 able effects, if any, that the drilling or related activi-
20 ties will have on fish and wildlife, their habitat, sub-
21 sistence resources, and the environment;

22 (2) a plan be implemented to avoid, minimize,
23 and mitigate (in that order and to the extent prac-
24 ticable) any significant adverse effect identified
25 under paragraph (1); and

1 (3) the development of the plan shall occur
2 after consultation with the agency or agencies hav-
3 ing jurisdiction over matters mitigated by the plan.

4 (c) REGULATIONS TO PROTECT COASTAL PLAIN
5 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,
6 AND THE ENVIRONMENT.—Before implementing the leas-
7 ing program authorized by this subtitle, the Secretary
8 shall prepare and promulgate regulations, lease terms,
9 conditions, restrictions, prohibitions, stipulations, and
10 other measures designed to ensure that the activities un-
11 dertaken on the Coastal Plain under this subtitle are con-
12 ducted in a manner consistent with the purposes and envi-
13 ronmental requirements of this subtitle.

14 (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-
15 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The
16 proposed regulations, lease terms, conditions, restrictions,
17 prohibitions, and stipulations for the leasing program
18 under this subtitle shall require compliance with all appli-
19 cable provisions of Federal and State environmental law,
20 and shall also require the following:

21 (1) Standards at least as effective as the safety
22 and environmental mitigation measures set forth in
23 items 1 through 29 at pages 167 through 169 of the
24 “Final Legislative Environmental Impact State-
25 ment” (April 1987) on the Coastal Plain.

1 (2) Seasonal limitations on exploration, develop-
2 ment, and related activities, where necessary, to
3 avoid significant adverse effects during periods of
4 concentrated fish and wildlife breeding, denning,
5 nesting, spawning, and migration.

6 (3) Design safety and construction standards
7 for all pipelines and any access and service roads,
8 that—

9 (A) minimize, to the maximum extent pos-
10 sible, adverse effects upon the passage of mi-
11 gratory species such as caribou; and

12 (B) minimize adverse effects upon the flow
13 of surface water by requiring the use of cul-
14 verts, bridges, and other structural devices.

15 (4) Prohibitions on general public access and
16 use on all pipeline access and service roads.

17 (5) Stringent reclamation and rehabilitation re-
18 quirements, consistent with the standards set forth
19 in this subtitle, requiring the removal from the
20 Coastal Plain of all oil and gas development and
21 production facilities, structures, and equipment upon
22 completion of oil and gas production operations, ex-
23 cept that the Secretary may exempt from the re-
24 quirements of this paragraph those facilities, struc-
25 tures, or equipment that the Secretary determines

1 would assist in the management of the Arctic Na-
2 tional Wildlife Refuge and that are donated to the
3 United States for that purpose.

4 (6) Appropriate prohibitions or restrictions on
5 access by all modes of transportation.

6 (7) Appropriate prohibitions or restrictions on
7 sand and gravel extraction.

8 (8) Consolidation of facility siting.

9 (9) Appropriate prohibitions or restrictions on
10 use of explosives.

11 (10) Avoidance, to the extent practicable, of
12 springs, streams, and river system; the protection of
13 natural surface drainage patterns, wetlands, and ri-
14 parian habitats; and the regulation of methods or
15 techniques for developing or transporting adequate
16 supplies of water for exploratory drilling.

17 (11) Avoidance or minimization of air traffic-re-
18 lated disturbance to fish and wildlife.

19 (12) Treatment and disposal of hazardous and
20 toxic wastes, solid wastes, reserve pit fluids, drilling
21 muds and cuttings, and domestic wastewater, includ-
22 ing an annual waste management report, a haz-
23 ardous materials tracking system, and a prohibition
24 on chlorinated solvents, in accordance with applica-
25 ble Federal and State environmental law.

1 (13) Fuel storage and oil spill contingency plan-
2 ning.

3 (14) Research, monitoring, and reporting re-
4 quirements.

5 (15) Field crew environmental briefings.

6 (16) Avoidance of significant adverse effects
7 upon subsistence hunting, fishing, and trapping by
8 subsistence users.

9 (17) Compliance with applicable air and water
10 quality standards.

11 (18) Appropriate seasonal and safety zone des-
12 ignations around well sites, within which subsistence
13 hunting and trapping shall be limited.

14 (19) Reasonable stipulations for protection of
15 cultural and archeological resources.

16 (20) All other protective environmental stipula-
17 tions, restrictions, terms, and conditions deemed
18 necessary by the Secretary.

19 (e) CONSIDERATIONS.—In preparing and promul-
20 gating regulations, lease terms, conditions, restrictions,
21 prohibitions, and stipulations under this section, the Sec-
22 retary shall consider the following:

23 (1) The stipulations and conditions that govern
24 the National Petroleum Reserve-Alaska leasing pro-
25 gram, as set forth in the 1999 Northeast National

1 Petroleum Reserve-Alaska Final Integrated Activity
2 Plan/Environmental Impact Statement.

3 (2) The environmental protection standards
4 that governed the initial Coastal Plain seismic explo-
5 ration program under parts 37.31 to 37.33 of title
6 50, Code of Federal Regulations.

7 (3) The land use stipulations for exploratory
8 drilling on the KIC-ASRC private lands that are set
9 forth in Appendix 2 of the August 9, 1983, agree-
10 ment between Arctic Slope Regional Corporation and
11 the United States.

12 (f) FACILITY CONSOLIDATION PLANNING.—

13 (1) IN GENERAL.—The Secretary shall, after
14 providing for public notice and comment, prepare
15 and update periodically a plan to govern, guide, and
16 direct the siting and construction of facilities for the
17 exploration, development, production, and transpor-
18 tation of Coastal Plain oil and gas resources.

19 (2) OBJECTIVES.—The plan shall have the fol-
20 lowing objectives:

21 (A) Avoiding unnecessary duplication of fa-
22 cilities and activities.

23 (B) Encouraging consolidation of common
24 facilities and activities.

1 (C) Locating or confining facilities and ac-
2 tivities to areas that will minimize impact on
3 fish and wildlife, their habitat, and the environ-
4 ment.

5 (D) Utilizing existing facilities wherever
6 practicable.

7 (E) Enhancing compatibility between wild-
8 life values and development activities.

9 (g) ACCESS TO PUBLIC LANDS.—The Secretary
10 shall—

11 (1) manage public lands in the Coastal Plain
12 subject to subsections (a) and (b) of section 811 of
13 the Alaska National Interest Lands Conservation
14 Act (16 U.S.C. 3121); and

15 (2) ensure that local residents shall have rea-
16 sonable access to public lands in the Coastal Plain
17 for traditional uses.

18 **SEC. 317. EXPEDITED JUDICIAL REVIEW.**

19 (a) FILING OF COMPLAINT.—

20 (1) DEADLINE.—Subject to paragraph (2), any
21 complaint seeking judicial review of any provision of
22 this subtitle or any action of the Secretary under
23 this subtitle shall be filed—

1 (A) except as provided in subparagraph
2 (B), within the 90-day period beginning on the
3 date of the action being challenged; or

4 (B) in the case of a complaint based solely
5 on grounds arising after such period, within 90
6 days after the complainant knew or reasonably
7 should have known of the grounds for the com-
8 plaint.

9 (2) VENUE.—Any complaint seeking judicial re-
10 view of any provision of this subtitle or any action
11 of the Secretary under this subtitle may be filed only
12 in the United States Court of Appeals for the Dis-
13 trict of Columbia.

14 (3) LIMITATION ON SCOPE OF CERTAIN RE-
15 VIEW.—Judicial review of a Secretarial decision to
16 conduct a lease sale under this subtitle, including
17 the environmental analysis thereof, shall be limited
18 to whether the Secretary has complied with the
19 terms of this subtitle and shall be based upon the
20 administrative record of that decision. The Sec-
21 retary's identification of a preferred course of action
22 to enable leasing to proceed and the Secretary's
23 analysis of environmental effects under this subtitle
24 shall be presumed to be correct unless shown other-

1 wise by clear and convincing evidence to the con-
2 trary.

3 (b) LIMITATION ON OTHER REVIEW.—Actions of the
4 Secretary with respect to which review could have been
5 obtained under this section shall not be subject to judicial
6 review in any civil or criminal proceeding for enforcement.

7 **SEC. 318. FEDERAL AND STATE DISTRIBUTION OF REVE-**
8 **NUES.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, of the amount of adjusted bonus, rental, and
11 royalty revenues from Federal oil and gas leasing and op-
12 erations authorized under this subtitle—

13 (1) 25 percent shall be paid to the State of
14 Alaska; and

15 (2) except as otherwise provided by this Act,
16 the balance shall be deposited into the Treasury as
17 miscellaneous receipts.

18 (b) PAYMENTS TO ALASKA.—Payments to the State
19 of Alaska under this section shall be made semiannually.

20 **SEC. 319. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

21 (a) IN GENERAL.—The Secretary shall issue rights-
22 of-way and easements across the Coastal Plain for the
23 transportation of oil and gas—

24 (1) except as provided in paragraph (2), under
25 section 28 of the Mineral Leasing Act (30 U.S.C.

1 185), without regard to title XI of the Alaska Na-
2 tional Interest Lands Conservation Act (30 U.S.C.
3 3161 et seq.); and

4 (2) under title XI of the Alaska National Inter-
5 est Lands Conservation Act (30 U.S.C. 3161 et
6 seq.), for access authorized by sections 1110 and
7 1111 of that Act (16 U.S.C. 3170 and 3171).

8 (b) TERMS AND CONDITIONS.—The Secretary shall
9 include in any right-of-way or easement issued under sub-
10 section (a) such terms and conditions as may be necessary
11 to ensure that transportation of oil and gas does not result
12 in a significant adverse effect on the fish and wildlife, sub-
13 sistence resources, their habitat, and the environment of
14 the Coastal Plain, including requirements that facilities be
15 sited or designed so as to avoid unnecessary duplication
16 of roads and pipelines.

17 (c) REGULATIONS.—The Secretary shall include in
18 regulations under section 312(g) provisions granting
19 rights-of-way and easements described in subsection (a)
20 of this section.

21 **SEC. 320. CONVEYANCE.**

22 In order to maximize Federal revenues by removing
23 clouds on title to lands and clarifying land ownership pat-
24 terns within the Coastal Plain, the Secretary, notwith-
25 standing the provisions of section 1302(h)(2) of the Alas-

1 ka National Interest Lands Conservation Act (16 U.S.C.
2 3192(h)(2)), shall convey—

3 (1) to the Kaktovik Inupiat Corporation the
4 surface estate of the lands described in paragraph 1
5 of Public Land Order 6959, to the extent necessary
6 to fulfill the Corporation's entitlement under sec-
7 tions 12 and 14 of the Alaska Native Claims Settle-
8 ment Act (43 U.S.C. 1611 and 1613) in accordance
9 with the terms and conditions of the Agreement be-
10 tween the Department of the Interior, the United
11 States Fish and Wildlife Service, the Bureau of
12 Land Management, and the Kaktovik Inupiat Cor-
13 poration effective January 22, 1993; and

14 (2) to the Arctic Slope Regional Corporation
15 the remaining subsurface estate to which it is enti-
16 tled pursuant to the August 9, 1983, agreement be-
17 tween the Arctic Slope Regional Corporation and the
18 United States of America.

19 **SEC. 321. LOCAL GOVERNMENT IMPACT AID AND COMMU-**
20 **NITY SERVICE ASSISTANCE.**

21 (a) FINANCIAL ASSISTANCE AUTHORIZED.—

22 (1) IN GENERAL.—The Secretary may use
23 amounts available from the Coastal Plain Local Gov-
24 ernment Impact Aid Assistance Fund established by
25 subsection (d) to provide timely financial assistance

1 to entities that are eligible under paragraph (2) and
2 that are directly impacted by the exploration for or
3 production of oil and gas on the Coastal Plain under
4 this subtitle.

5 (2) ELIGIBLE ENTITIES.—The North Slope
6 Borough, the City of Kaktovik, and any other bor-
7 ough, municipal subdivision, village, or other com-
8 munity in the State of Alaska that is directly im-
9 pacted by exploration for, or the production of, oil
10 or gas on the Coastal Plain under this subtitle, as
11 determined by the Secretary, shall be eligible for fi-
12 nancial assistance under this section.

13 (b) USE OF ASSISTANCE.—Financial assistance
14 under this section may be used only for—

15 (1) planning for mitigation of the potential ef-
16 fects of oil and gas exploration and development on
17 environmental, social, cultural, recreational, and sub-
18 sistence values;

19 (2) implementing mitigation plans and main-
20 taining mitigation projects;

21 (3) developing, carrying out, and maintaining
22 projects and programs that provide new or expanded
23 public facilities and services to address needs and
24 problems associated with such effects, including fire-

1 fighting, police, water, waste treatment, medivac,
2 and medical services; and

3 (4) establishment of a coordination office, by
4 the north slope borough, in the City of Kaktovik,
5 which shall—

6 (A) coordinate with and advise developers
7 on local conditions, impact, and history of the
8 areas utilized for development; and

9 (B) provide to the Committee on Resources
10 of the House of Representatives and the Com-
11 mittee on Energy and Natural Resources of the
12 Senate an annual report on the status of co-
13 ordination between developers and the commu-
14 nities affected by development.

15 (c) APPLICATION.—

16 (1) IN GENERAL.—Any community that is eligi-
17 ble for assistance under this section may submit an
18 application for such assistance to the Secretary, in
19 such form and under such procedures as the Sec-
20 retary may prescribe by regulation.

21 (2) NORTH SLOPE BOROUGH COMMUNITIES.—A
22 community located in the North Slope Borough may
23 apply for assistance under this section either directly
24 to the Secretary or through the North Slope Bor-
25 ough.

1 (3) APPLICATION ASSISTANCE.—The Secretary
2 shall work closely with and assist the North Slope
3 Borough and other communities eligible for assist-
4 ance under this section in developing and submitting
5 applications for assistance under this section.

6 (d) ESTABLISHMENT OF FUND.—

7 (1) IN GENERAL.—There is established in the
8 Treasury the Coastal Plain Local Government Im-
9 pact Aid Assistance Fund.

10 (2) USE.—Amounts in the fund may be used
11 only for providing financial assistance under this
12 section.

13 (3) DEPOSITS.—Subject to paragraph (4), there
14 shall be deposited into the fund amounts received by
15 the United States as revenues derived from rents,
16 bonuses, and royalties from Federal leases and lease
17 sales authorized under this subtitle.

18 (4) LIMITATION ON DEPOSITS.—The total
19 amount in the fund may not exceed \$11,000,000.

20 (5) INVESTMENT OF BALANCES.—The Sec-
21 retary of the Treasury shall invest amounts in the
22 fund in interest bearing government securities.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-
24 vide financial assistance under this section there is author-
25 ized to be appropriated to the Secretary from the Coastal

1 Plain Local Government Impact Aid Assistance Fund
2 \$5,000,000 for each fiscal year.

3 **Subtitle C—Opening of Outer**
4 **Continental Shelf**

5 **SEC. 331. SHORT TITLE.**

6 This subtitle may be cited as the “Deep Ocean En-
7 ergy Resources Act of 2008”.

8 **SEC. 332. POLICY.**

9 It is the policy of the United States that—

10 (1) the United States is blessed with abundant
11 energy resources on the outer Continental Shelf and
12 has developed a comprehensive framework of envi-
13 ronmental laws and regulations and fostered the de-
14 velopment of state-of-the-art technology that allows
15 for the responsible development of these resources
16 for the benefit of its citizenry;

17 (2) adjacent States are required by the cir-
18 cumstances to commit significant resources in sup-
19 port of exploration, development, and production ac-
20 tivities for mineral resources on the outer Conti-
21 nental Shelf, and it is fair and proper for a portion
22 of the receipts from such activities to be shared with
23 Adjacent States and their local coastal governments;

24 (3) the existing laws governing the leasing and
25 production of the mineral resources of the outer

1 Continental Shelf have reduced the production of
2 mineral resources, have preempted Adjacent States
3 from being sufficiently involved in the decisions re-
4 garding the allowance of mineral resource develop-
5 ment, and have been harmful to the national inter-
6 est;

7 (4) the national interest is served by granting
8 the Adjacent States more options related to whether
9 or not mineral leasing should occur in the outer
10 Continental Shelf within their Adjacent Zones;

11 (5) it is not reasonably foreseeable that explo-
12 ration of a leased tract located more than 25 miles
13 seaward of the coastline, development and produc-
14 tion of a natural gas discovery located more than 25
15 miles seaward of the coastline, or development and
16 production of an oil discovery located more than 50
17 miles seaward of the coastline will adversely affect
18 resources near the coastline;

19 (6) transportation of oil from a leased tract
20 might reasonably be foreseen, under limited cir-
21 cumstances, to have the potential to adversely affect
22 resources near the coastline if the oil is within 50
23 miles of the coastline, but such potential to adversely
24 affect such resources is likely no greater, and prob-
25 ably less, than the potential impacts from tanker

1 transportation because tanker spills usually involve
2 large releases of oil over a brief period of time; and
3 (7) among other bodies of inland waters, the
4 Great Lakes, Long Island Sound, Delaware Bay,
5 Chesapeake Bay, Albemarle Sound, San Francisco
6 Bay, and Puget Sound are not part of the outer
7 Continental Shelf, and are not subject to leasing by
8 the Federal Government for the exploration, develop-
9 ment, and production of any mineral resources that
10 might lie beneath them.

11 **SEC. 333. DEFINITIONS UNDER THE OUTER CONTINENTAL**
12 **SHELF LANDS ACT.**

13 Section 2 of the Outer Continental Shelf Lands Act
14 (43 U.S.C. 1331) is amended—

15 (1) by amending paragraph (f) to read as fol-
16 lows:

17 “(f) The term ‘affected State’ means the Adjacent
18 State.”;

19 (2) by striking the semicolon at the end of each
20 of paragraphs (a) through (o) and inserting a pe-
21 riod;

22 (3) by striking “; and” at the end of paragraph
23 (p) and inserting a period;

24 (4) by adding at the end the following:

1 “(r) The term ‘Adjacent State’ means, with respect
2 to any program, plan, lease sale, leased tract or other ac-
3 tivity, proposed, conducted, or approved pursuant to the
4 provisions of this Act, any State the laws of which are
5 declared, pursuant to section 4(a)(2), to be the law of the
6 United States for the portion of the outer Continental
7 Shelf on which such program, plan, lease sale, leased tract
8 or activity appertains or is, or is proposed to be, con-
9 ducted. For purposes of this paragraph, the term ‘State’
10 includes Puerto Rico and the other Territories of the
11 United States.

12 “(s) The term ‘Adjacent Zone’ means, with respect
13 to any program, plan, lease sale, leased tract, or other ac-
14 tivity, proposed, conducted, or approved pursuant to the
15 provisions of this Act, the portion of the outer Continental
16 Shelf for which the laws of a particular Adjacent State
17 are declared, pursuant to section 4(a)(2), to be the law
18 of the United States.

19 “(t) The term ‘miles’ means statute miles.

20 “(u) The term ‘coastline’ has the same meaning as
21 the term ‘coast line’ as defined in section 2(c) of the Sub-
22 merged Lands Act (43 U.S.C. 1301(c)).

23 “(v) The term ‘Neighboring State’ means a coastal
24 State having a common boundary at the coastline with the
25 Adjacent State.”; and

1 (5) in paragraph (a), by inserting after “con-
2 trol” the following: “or lying within the United
3 States exclusive economic zone adjacent to the Terri-
4 tories of the United States”.

5 **SEC. 334. DETERMINATION OF ADJACENT ZONES AND**
6 **PLANNING AREAS.**

7 Section 4(a)(2)(A) of the Outer Continental Shelf
8 Lands Act (43 U.S.C. 1333(a)(2)(A)) is amended in the
9 first sentence by striking “, and the President” and all
10 that follows through the end of the sentence and inserting
11 the following: “. The lines extending seaward and defining
12 each State’s Adjacent Zone, and each OCS Planning Area,
13 are as indicated on the maps for each outer Continental
14 Shelf region entitled ‘Alaska OCS Region State Adjacent
15 Zone and OCS Planning Areas’, ‘Pacific OCS Region
16 State Adjacent Zones and OCS Planning Areas’, ‘Gulf of
17 Mexico OCS Region State Adjacent Zones and OCS Plan-
18 ning Areas’, and ‘Atlantic OCS Region State Adjacent
19 Zones and OCS Planning Areas’, all of which are dated
20 September 2005 and on file in the Office of the Director,
21 Minerals Management Service.”.

22 **SEC. 335. ADMINISTRATION OF LEASING.**

23 Section 5 of the Outer Continental Shelf Lands Act
24 (43 U.S.C. 1334) is amended by adding at the end the
25 following:

1 “(k) VOLUNTARY PARTIAL RELINQUISHMENT OF A
2 LEASE.—Any lessee of a producing lease may relinquish
3 to the Secretary any portion of a lease that the lessee has
4 no interest in producing and that the Secretary finds is
5 geologically prospective. In return for any such relinquish-
6 ment, the Secretary shall provide to the lessee a royalty
7 incentive for the portion of the lease retained by the lessee,
8 in accordance with regulations promulgated by the Sec-
9 retary to carry out this subsection. The Secretary shall
10 publish final regulations implementing this subsection
11 within 365 days after the date of the enactment of the
12 Deep Ocean Energy Resources Act of 2008.

13 “(l) NATURAL GAS LEASE REGULATIONS.—Not later
14 than July 1, 2009, the Secretary shall publish a final regu-
15 lation that shall—

16 “(1) establish procedures for entering into nat-
17 ural gas leases;

18 “(2) ensure that natural gas leases are only
19 available for tracts on the outer Continental Shelf
20 that are wholly within 100 miles of the coastline
21 within an area withdrawn from disposition by leas-
22 ing on the day after the date of enactment of the
23 Deep Ocean Energy Resources Act of 2008;

24 “(3) provide that natural gas leases shall con-
25 tain the same rights and obligations established for

1 oil and gas leases, except as otherwise provided in
2 the Deep Ocean Energy Resources Act of 2008;

3 “(4) provide that, in reviewing the adequacy of
4 bids for natural gas leases, the value of any crude
5 oil estimated to be contained within any tract shall
6 be excluded;

7 “(5) provide that any crude oil produced from
8 a well and reinjected into the leased tract shall not
9 be subject to payment of royalty, and that the Sec-
10 retary shall consider, in setting the royalty rates for
11 a natural gas lease, the additional cost to the lessee
12 of not producing any crude oil; and

13 “(6) provide that any Federal law that applies
14 to an oil and gas lease on the outer Continental
15 Shelf shall apply to a natural gas lease unless other-
16 wise clearly inapplicable.”.

17 **SEC. 336. GRANT OF LEASES BY SECRETARY.**

18 Section 8 of the Outer Continental Shelf Lands Act
19 (43 U.S.C. 1337) is amended—

20 (1) in subsection (a)(1) by inserting after the
21 first sentence the following: “Further, the Secretary
22 may grant natural gas leases in a manner similar to
23 the granting of oil and gas leases and under the var-
24 ious bidding systems available for oil and gas
25 leases.”;

1 (2) by adding at the end of subsection (b) the
2 following:

3 “The Secretary may issue more than one lease for a given
4 tract if each lease applies to a separate and distinct range
5 of vertical depths, horizontal surface area, or a combina-
6 tion of the two. The Secretary may issue regulations that
7 the Secretary determines are necessary to manage such
8 leases consistent with the purposes of this Act.”;

9 (3) by amending subsection (p)(2)(B) to read
10 as follows:

11 “(B) The Secretary shall provide for the pay-
12 ment to coastal states, and their local coastal gov-
13 ernments, of 25 percent of Federal receipts from
14 projects authorized under this section located par-
15 tially or completely within the area extending sea-
16 ward of State submerged lands out to 4 marine
17 leagues from the coastline, and the payment to
18 coastal states of 25 percent of the receipts from
19 projects completely located in the area more than 4
20 marine leagues from the coastline. Payments shall
21 be based on a formula established by the Secretary
22 by rulemaking no later than 180 days after the date
23 of the enactment of the Deep Ocean Energy Re-
24 sources Act of 2008 that provides for equitable dis-
25 tribution, based on proximity to the project, among

1 coastal states that have coastline that is located
2 within 200 miles of the geographic center of the
3 project.”;

4 (4) by adding at the end the following:

5 “(q) NATURAL GAS LEASES.—

6 “(1) RIGHT TO PRODUCE NATURAL GAS.—A
7 lessee of a natural gas lease shall have the right to
8 produce the natural gas from a field on a natural
9 gas leased tract if the Secretary estimates that the
10 discovered field has at least 40 percent of the eco-
11 nomically recoverable Btu content of the field con-
12 tained within natural gas and such natural gas is ec-
13 onomical to produce.

14 “(2) CRUDE OIL.—A lessee of a natural gas
15 lease may not produce crude oil from the lease.

16 “(3) ESTIMATES OF BTU CONTENT.—The Sec-
17 retary shall make estimates of the natural gas Btu
18 content of discovered fields on a natural gas lease
19 only after the completion of at least one exploration
20 well, the data from which has been tied to the re-
21 sults of a three-dimensional seismic survey of the
22 field. The Secretary may not require the lessee to
23 further delineate any discovered field prior to mak-
24 ing such estimates.

1 “(4) DEFINITION OF NATURAL GAS.—For pur-
2 poses of a natural gas lease, natural gas means nat-
3 ural gas and all substances produced in association
4 with gas, including, but not limited to, hydrocarbon
5 liquids (other than crude oil) that are obtained by
6 the condensation of hydrocarbon vapors and sepa-
7 rate out in liquid form from the produced gas
8 stream.

9 “(r) REMOVAL OF RESTRICTIONS ON JOINT BIDDING
10 IN CERTAIN AREAS OF THE OUTER CONTINENTAL
11 SHELF.—Restrictions on joint bidders shall no longer
12 apply to tracts located in the Alaska OCS Region. Such
13 restrictions shall not apply to tracts in other OCS regions
14 determined to be ‘frontier tracts’ or otherwise ‘high cost
15 tracts’ under final regulations that shall be published by
16 the Secretary by not later than 365 days after the date
17 of the enactment of the Deep Ocean Energy Resources
18 Act of 2008.

19 “(s) ROYALTY SUSPENSION PROVISIONS.—The Sec-
20 retary shall agree to a request by any lessee to amend
21 any lease issued for Central and Western Gulf of Mexico
22 tracts during the period of January 1, 1998, through De-
23 cember 31, 1999, to incorporate price thresholds applica-
24 ble to royalty suspension provisions, or amend existing
25 price thresholds, in the amount of \$40.50 per barrel (2006

1 dollars) for oil and for natural gas of \$6.75 per million
2 Btu (2006 dollars). Any amended lease shall impose the
3 new or revised price thresholds effective October 1, 2008.
4 Existing lease provisions shall prevail through September
5 30, 2008. After the date of the enactment of the Deep
6 Ocean Energy Resources Act of 2008, price thresholds
7 shall apply to any royalty suspension volumes granted by
8 the Secretary. Unless otherwise set by Secretary by regu-
9 lation or for a particular lease sale, the price thresholds
10 shall be \$40.50 for oil (2006 dollars) and \$6.75 for nat-
11 ural gas (2006 dollars).

12 “(t) CONSERVATION OF RESOURCES FEES.—

13 “(1) Not later than one year after the date of
14 the enactment of the Deep Ocean Energy Resources
15 Act of 2008, the Secretary by regulation shall estab-
16 lish a conservation of resources fee for producing
17 leases that will apply to new and existing leases
18 which shall be set at \$9 per barrel for oil and \$1.25
19 per million Btu for gas. This fee shall only apply to
20 leases in production located in more than 200 me-
21 ters of water for which royalties are not being paid
22 when prices exceed \$40.50 per barrel for oil and
23 \$6.75 per million Btu for natural gas in 2006, dol-
24 lars. This fee shall apply to production from and

1 after October 1, 2008, and shall be treated as offset-
2 ting receipts.

3 “(2) Not later than one year after the date of
4 the enactment of the Deep Ocean Energy Resources
5 Act of 2008, the Secretary by regulation shall estab-
6 lish a conservation of resources fee for nonproducing
7 leases that will apply to new and existing leases
8 which shall be set at \$3.75 per acre per year. This
9 fee shall apply from and after October 1, 2008, and
10 shall be treated as offsetting receipts.”;

11 (5) by striking subsection (a)(3)(A) and redesi-
12 gnating the subsequent subparagraphs as subpara-
13 graphs (A) and (B), respectively;

14 (6) in subsection (a)(3)(A) (as so redesignated)
15 by striking “In the Western” and all that follows
16 through “the Secretary” the first place it appears
17 and inserting “The Secretary”; and

18 (7) effective October 1, 2008, in subsection
19 (g)—

20 (A) by striking all after “(g)”, except para-
21 graph (3);

22 (B) by striking the last sentence of para-
23 graph (3); and

24 (C) by striking “(3)”.

1 **SEC. 337. RESERVATION OF LANDS AND RIGHTS.**

2 Section 12 of the Outer Continental Shelf Lands Act
3 (43 U.S.C. 1341) is amended—

4 (1) in subsection (a) by adding at the end the
5 following: “The President may partially or com-
6 pletely revise or revoke any prior withdrawal made
7 by the President under the authority of this section.
8 The President may not revise or revoke a withdrawal
9 that is extended by a State under subsection (h), nor
10 may the President withdraw from leasing any area
11 for which a State failed to prohibit, or petition to
12 prohibit, leasing under subsection (g). Further, in
13 the area of the outer Continental Shelf more than
14 100 miles from any coastline, not more than 25 per-
15 cent of the acreage of any OCS Planning Area may
16 be withdrawn from leasing under this section at any
17 point in time. A withdrawal by the President may be
18 for a term not to exceed 10 years. When considering
19 potential uses of the outer Continental Shelf, to the
20 maximum extent possible, the President shall accom-
21 modate competing interests and potential uses.”;

22 (2) by adding at the end the following:

23 “(g) AVAILABILITY FOR LEASING WITHIN CERTAIN
24 AREAS OF THE OUTER CONTINENTAL SHELF.—

25 “(1) PROHIBITION AGAINST LEASING.—

1 “(A) UNAVAILABLE FOR LEASING WITH-
2 OUT STATE REQUEST.—Except as otherwise
3 provided in this subsection, from and after en-
4 actment of the Deep Ocean Energy Resources
5 Act of 2008, the Secretary shall not offer for
6 leasing for oil and gas, or natural gas, any area
7 within 50 miles of the coastline that was with-
8 drawn from disposition by leasing in the Atlan-
9 tic OCS Region or the Pacific OCS Region, or
10 the Gulf of Mexico OCS Region Eastern Plan-
11 ning Area, as depicted on the maps referred to
12 in this subparagraph, under the ‘Memorandum
13 on Withdrawal of Certain Areas of the United
14 States Outer Continental Shelf from Leasing
15 Disposition’, 34 Weekly Comp. Pres. Doc.
16 1111, dated June 12, 1998, or any area within
17 50 miles of the coastline not withdrawn under
18 that Memorandum that is included within the
19 Gulf of Mexico OCS Region Eastern Planning
20 Area as indicated on the map entitled ‘Gulf of
21 Mexico OCS Region State Adjacent Zones and
22 OCS Planning Areas’ or the Florida Straits
23 Planning Area as indicated on the map entitled
24 ‘Atlantic OCS Region State Adjacent Zones and
25 OCS Planning Areas’, both of which are dated

1 September 2005 and on file in the Office of the
2 Director, Minerals Management Service.

3 “(B) AREAS BETWEEN 50 AND 100 MILES
4 FROM THE COASTLINE.—Unless an Adjacent
5 State petitions under subsection (h) within one
6 year after the date of the enactment of the
7 Deep Ocean Energy Resources Act of 2008 for
8 natural gas leasing or by June 30, 2011, for oil
9 and gas leasing, the Secretary shall offer for
10 leasing any area more than 50 miles but less
11 than 100 miles from the coastline that was
12 withdrawn from disposition by leasing in the
13 Atlantic OCS Region, the Pacific OCS Region,
14 or the Gulf of Mexico OCS Region Eastern
15 Planning Area, as depicted on the maps re-
16 ferred to in this subparagraph, under the
17 ‘Memorandum on Withdrawal of Certain Areas
18 of the United States Outer Continental Shelf
19 from Leasing Disposition’, 34 Weekly Comp.
20 Pres. Doc. 1111, dated June 12, 1998, or any
21 area more than 50 miles but less than 100
22 miles of the coastline not withdrawn under that
23 Memorandum that is included within the Gulf
24 of Mexico OCS Region Eastern Planning Area
25 as indicated on the map entitled ‘Gulf of Mexico

1 OCS Region State Adjacent Zones and OCS
2 Planning Areas’ or within the Florida Straits
3 Planning Area as indicated on the map entitled
4 ‘Atlantic OCS Region State Adjacent Zones and
5 OCS Planning Areas’, both of which are dated
6 September 2005 and on file in the Office of the
7 Director, Minerals Management Service.

8 “(2) REVOCATION OF WITHDRAWAL.—The pro-
9 visions of the ‘Memorandum on Withdrawal of Cer-
10 tain Areas of the United States Outer Continental
11 Shelf from Leasing Disposition’, 34 Weekly Comp.
12 Pres. Doc. 1111, dated June 12, 1998, are hereby
13 revoked and are no longer in effect. Any tract only
14 partially added to the Gulf of Mexico OCS Region
15 Central Planning Area by this Act shall be eligible
16 for leasing of the part of such tract that is included
17 within the Gulf of Mexico OCS Region Central Plan-
18 ning Area, and the remainder of such tract that lies
19 outside of the Gulf of Mexico OCS Region Central
20 Planning Area may be developed and produced by
21 the lessee of such partial tract using extended reach
22 or similar drilling from a location on a leased area.
23 Further, any area in the OCS withdrawn from leas-
24 ing may be leased, and thereafter developed and pro-
25 duced by the lessee using extended reach or similar

1 drilling from a location on a leased area located in
2 an area available for leasing.

3 “(3) PETITION FOR LEASING.—

4 “(A) IN GENERAL.—The Governor of the
5 State, upon concurrence of its legislature, may
6 submit to the Secretary a petition requesting
7 that the Secretary make available any area that
8 is within the State’s Adjacent Zone, included
9 within the provisions of paragraph (1), and that
10 (i) is greater than 25 miles from any point on
11 the coastline of a Neighboring State for the
12 conduct of offshore leasing, pre-leasing, and re-
13 lated activities with respect to natural gas leas-
14 ing; or (ii) is greater than 50 miles from any
15 point on the coastline of a Neighboring State
16 for the conduct of offshore leasing, pre-leasing,
17 and related activities with respect to oil and gas
18 leasing. The Adjacent State may also petition
19 for leasing any other area within its Adjacent
20 Zone if leasing is allowed in the similar area of
21 the Adjacent Zone of the applicable Neigh-
22 boring State, or if not allowed, if the Neigh-
23 boring State, acting through its Governor, ex-
24 presses its concurrence with the petition. The
25 Secretary shall only consider such a petition

1 upon making a finding that leasing is allowed
2 in the similar area of the Adjacent Zone of the
3 applicable Neighboring State or upon receipt of
4 the concurrence of the Neighboring State. The
5 date of receipt by the Secretary of such concur-
6 rence by the Neighboring State shall constitute
7 the date of receipt of the petition for that area
8 for which the concurrence applies. Except for
9 any area described in the last sentence of para-
10 graph (2), a petition for leasing any part of the
11 Alabama Adjacent Zone that is a part of the
12 Gulf of Mexico Eastern Planning Area, as indi-
13 cated on the map entitled ‘Gulf of Mexico OCS
14 Region State Adjacent Zones and OCS Plan-
15 ning Areas’ which is dated September 2005 and
16 on file in the Office of the Director, Minerals
17 Management Service, shall require the concur-
18 rence of both Alabama and Florida.

19 “(B) LIMITATIONS ON LEASING.—In its
20 petition, a State with an Adjacent Zone that
21 contains leased tracts may condition new leas-
22 ing for oil and gas, or natural gas for tracts
23 within 25 miles of the coastline by—

24 “(i) requiring a net reduction in the
25 number of production platforms;

1 “(ii) requiring a net increase in the
2 average distance of production platforms
3 from the coastline;

4 “(iii) limiting permanent surface occu-
5 pancy on new leases to areas that are more
6 than 10 miles from the coastline;

7 “(iv) limiting some tracts to being
8 produced from shore or from platforms lo-
9 cated on other tracts; or

10 “(v) other conditions that the Adja-
11 cent State may deem appropriate as long
12 as the Secretary does not determine that
13 production is made economically or tech-
14 nically impracticable or otherwise impos-
15 sible.

16 “(C) ACTION BY SECRETARY.—Not later
17 than 90 days after receipt of a petition under
18 subparagraph (A), the Secretary shall approve
19 the petition, unless the Secretary determines
20 that leasing the area would probably cause seri-
21 ous harm or damage to the marine resources of
22 the State’s Adjacent Zone. Prior to approving
23 the petition, the Secretary shall complete an en-
24 vironmental assessment that documents the an-

1 anticipated environmental effects of leasing in the
2 area included within the scope of the petition.

3 “(D) FAILURE TO ACT.—If the Secretary
4 fails to approve or deny a petition in accordance
5 with subparagraph (C) the petition shall be con-
6 sidered to be approved 90 days after receipt of
7 the petition.

8 “(E) AMENDMENT OF THE 5-YEAR LEAS-
9 ING PROGRAM.—Notwithstanding section 18,
10 within 180 days of the approval of a petition
11 under subparagraph (C) or (D), after the expi-
12 ration of the time limits in paragraph (1)(B),
13 and within 180 days after the enactment of the
14 Deep Ocean Energy Resources Act of 2008 for
15 the areas made available for leasing under
16 paragraph (2), the Secretary shall amend the
17 current 5-Year Outer Continental Shelf Oil and
18 Gas Leasing Program to include a lease sale or
19 sales for at least 75 percent of the associated
20 areas, unless there are, from the date of ap-
21 proval, expiration of such time limits, or enact-
22 ment, as applicable, fewer than 12 months re-
23 maining in the current 5-Year Leasing Program
24 in which case the Secretary shall include the as-
25 sociated areas within lease sales under the next

1 5-Year Leasing Program. For purposes of
2 amending the 5-Year Program in accordance
3 with this section, further consultations with
4 States shall not be required. For purposes of
5 this section, an environmental assessment per-
6 formed under the provisions of the National
7 Environmental Policy Act of 1969 to assess the
8 effects of approving the petition shall be suffi-
9 cient to amend the 5-Year Leasing Program.

10 “(h) OPTION TO EXTEND WITHDRAWAL FROM
11 LEASING WITHIN CERTAIN AREAS OF THE OUTER CON-
12 TINENTAL SHELF.—A State, through its Governor and
13 upon the concurrence of its legislature, may extend for a
14 period of time of up to 5 years for each extension the with-
15 drawal from leasing for all or part of any area within the
16 State’s Adjacent Zone located more than 50 miles, but less
17 than 100 miles, from the coastline that is subject to sub-
18 section (g)(1)(B). A State may extend multiple times for
19 any particular area but not more than once per calendar
20 year for any particular area. A State must prepare sepa-
21 rate extensions, with separate votes by its legislature, for
22 oil and gas leasing and for natural gas leasing. An exten-
23 sion by a State may affect some areas to be withdrawn
24 from all leasing and some areas to be withdrawn only from
25 one type of leasing. Extensions of the withdrawal from

1 leasing of any part of the Alabama Adjacent Zone that
2 is more than 50 miles, but less than 100 miles, from the
3 coastline that is a part of the Gulf of Mexico OCS Region
4 Eastern Planning Area, as indicated on the map entitled
5 ‘Gulf of Mexico OCS Region State Adjacent Zones and
6 OCS Planning Areas’ which is dated September 2005 and
7 on file in the Office of the Director, Minerals Management
8 Service, may be made by either Alabama or Florida.

9 “(i) EFFECT OF OTHER LAWS.—Adoption by any
10 Adjacent State of any constitutional provision, or enact-
11 ment of any State statute, that has the effect, as deter-
12 mined by the Secretary, of restricting either the Governor
13 or the Legislature, or both, from exercising full discretion
14 related to subsection (g) or (h), or both, shall automati-
15 cally (1) prohibit any sharing of OCS Receipts under this
16 Act with the Adjacent State, and its coastal political sub-
17 divisions, and (2) prohibit the Adjacent State from exer-
18 cising any authority under subsection (h), for the duration
19 of the restriction. The Secretary shall make the determina-
20 tion of the existence of such restricting constitutional pro-
21 vision or State statute within 30 days of a petition by any
22 outer Continental Shelf lessee or coastal State.

23 “(j) PROHIBITION ON LEASING EAST OF THE MILI-
24 TARY MISSION LINE.—

1 “(1) Notwithstanding any other provision of
2 law, from and after the enactment of the Deep
3 Ocean Energy Resources Act of 2008, no area of the
4 outer Continental Shelf located in the Gulf of Mexico
5 east of the military mission line may be offered for
6 leasing for oil and gas or natural gas prior to Janu-
7 ary 1, 2022.

8 “(2) In this subsection, the term ‘military mis-
9 sion line’ means a line located at 86 degrees, 41
10 minutes West Longitude, and extending south from
11 the coast of Florida to the outer boundary of United
12 States territorial waters in the Gulf of Mexico.”.

13 **SEC. 338. OUTER CONTINENTAL SHELF LEASING PROGRAM.**

14 Section 18 of the Outer Continental Shelf Lands Act
15 (43 U.S.C. 1344) is amended—

16 (1) in subsection (a), by adding at the end of
17 paragraph (3) the following: “The Secretary shall, in
18 each 5-year program, include lease sales that when
19 viewed as a whole propose to offer for oil and gas
20 or natural gas leasing at least 75 percent of the
21 available unleased acreage within each OCS Plan-
22 ning Area. Available unleased acreage is that portion
23 of the outer Continental Shelf that is not under
24 lease at the time of the proposed lease sale, and has

1 not otherwise been made unavailable for leasing by
2 law.”;

3 (2) in subsection (c), by striking so much as
4 precedes paragraph (3) and inserting the following:

5 “(c)(1) During the preparation of any proposed leas-
6 ing program under this section, the Secretary shall con-
7 sider and analyze leasing throughout the entire Outer
8 Continental Shelf without regard to any other law affect-
9 ing such leasing. During this preparation the Secretary
10 shall invite and consider suggestions from any interested
11 Federal agency, including the Attorney General, in con-
12 sultation with the Federal Trade Commission, and from
13 the Governor of any coastal State. The Secretary may also
14 invite or consider any suggestions from the executive of
15 any local government in a coastal State that have been
16 previously submitted to the Governor of such State, and
17 from any other person. Further, the Secretary shall con-
18 sult with the Secretary of Defense regarding military oper-
19 ational needs in the outer Continental Shelf. The Sec-
20 retary shall work with the Secretary of Defense to resolve
21 any conflicts that might arise regarding offering any area
22 of the outer Continental Shelf for oil and gas or natural
23 gas leasing. If the Secretaries are not able to resolve all
24 such conflicts, any unresolved issues shall be elevated to
25 the President for resolution.

1 “(2) After the consideration and analysis required by
2 paragraph (1), including the consideration of the sugges-
3 tions received from any interested Federal agency, the
4 Federal Trade Commission, the Governor of any coastal
5 State, any local government of a coastal State, and any
6 other person, the Secretary shall publish in the Federal
7 Register a proposed leasing program accompanied by a
8 draft environmental impact statement prepared pursuant
9 to the National Environmental Policy Act of 1969. After
10 the publishing of the proposed leasing program and during
11 the comment period provided for on the draft environ-
12 mental impact statement, the Secretary shall submit a
13 copy of the proposed program to the Governor of each af-
14 fected State for review and comment. The Governor may
15 solicit comments from those executives of local govern-
16 ments in the Governor’s State that the Governor, in the
17 discretion of the Governor, determines will be affected by
18 the proposed program. If any comment by such Governor
19 is received by the Secretary at least 15 days prior to sub-
20 mission to the Congress pursuant to paragraph (3) and
21 includes a request for any modification of such proposed
22 program, the Secretary shall reply in writing, granting or
23 denying such request in whole or in part, or granting such
24 request in such modified form as the Secretary considers
25 appropriate, and stating the Secretary’s reasons therefor.

1 All such correspondence between the Secretary and the
2 Governor of any affected State, together with any addi-
3 tional information and data relating thereto, shall accom-
4 pany such proposed program when it is submitted to the
5 Congress.”; and

6 (3) by adding at the end the following:

7 “(i) PROJECTION OF STATE ADJACENT ZONE RE-
8 SOURCES AND STATE AND LOCAL GOVERNMENT SHARES
9 OF OCS RECEIPTS.—Concurrent with the publication of
10 the scoping notice at the beginning of the development of
11 each 5-year outer Continental Shelf oil and gas leasing
12 program, or as soon thereafter as possible, the Secretary
13 shall—

14 “(1) provide to each Adjacent State a current
15 estimate of proven and potential oil and gas re-
16 sources located within the State’s Adjacent Zone;
17 and

18 “(2) provide to each Adjacent State, and coast-
19 al political subdivisions thereof, a best-efforts projec-
20 tion of the OCS Receipts that the Secretary expects
21 will be shared with each Adjacent State, and its
22 coastal political subdivisions, using the assumption
23 that the unleased tracts within the State’s Adjacent
24 Zone are fully made available for leasing, including
25 long-term projected OCS Receipts. In addition, the

1 Secretary shall include a macroeconomic estimate of
2 the impact of such leasing on the national economy
3 and each State's economy, including investment,
4 jobs, revenues, personal income, and other cat-
5 egories.”.

6 **SEC. 339. COORDINATION WITH ADJACENT STATES.**

7 Section 19 of the Outer Continental Shelf Lands Act
8 (43 U.S.C. 1345) is amended—

9 (1) in subsection (a) in the first sentence by in-
10 sserting “, for any tract located within the Adjacent
11 State's Adjacent Zone,” after “government”; and

12 (2) by adding the following:

13 “(f)(1) No Federal agency may permit or otherwise
14 approve, without the concurrence of the Adjacent State,
15 the construction of a crude oil or petroleum products (or
16 both) pipeline within the part of the Adjacent State's Ad-
17 jacent Zone that is withdrawn from oil and gas or natural
18 gas leasing, except that such a pipeline may be approved,
19 without such Adjacent State's concurrence, to pass
20 through such Adjacent Zone if at least 50 percent of the
21 production projected to be carried by the pipeline within
22 its first 10 years of operation is from areas of the Adja-
23 cent State's Adjacent Zone.

24 “(2) No State may prohibit the construction within
25 its Adjacent Zone or its State waters of a natural gas pipe-

1 line that will transport natural gas produced from the
2 outer Continental Shelf. However, an Adjacent State may
3 prevent a proposed natural gas pipeline landing location
4 if it proposes two alternate landing locations in the Adja-
5 cent State, acceptable to the Adjacent State, located with-
6 in 50 miles on either side of the proposed landing loca-
7 tion.”.

8 **SEC. 340. ENVIRONMENTAL STUDIES.**

9 Section 20(d) of the Outer Continental Shelf Lands
10 Act (43 U.S.C. 1346) is amended—

11 (1) by inserting “(1)” after “(d)”; and

12 (2) by adding at the end the following:

13 “(2) For all programs, lease sales, leases, and actions
14 under this Act, the following shall apply regarding the ap-
15 plication of the National Environmental Policy Act of
16 1969:

17 “(A) Granting or directing lease suspensions
18 and the conduct of all preliminary activities on outer
19 Continental Shelf tracts, including seismic activities,
20 are categorically excluded from the need to prepare
21 either an environmental assessment or an environ-
22 mental impact statement, and the Secretary shall
23 not be required to analyze whether any exceptions to
24 a categorical exclusion apply for activities conducted
25 under the authority of this Act.

1 “(B) The environmental impact statement de-
2 veloped in support of each 5-year oil and gas leasing
3 program provides the environmental analysis for all
4 lease sales to be conducted under the program and
5 such sales shall not be subject to further environ-
6 mental analysis.

7 “(C) Exploration plans shall not be subject to
8 any requirement to prepare an environmental impact
9 statement, and the Secretary may find that explo-
10 ration plans are eligible for categorical exclusion due
11 to the impacts already being considered within an
12 environmental impact statement or due to mitigation
13 measures included within the plan.

14 “(D) Within each OCS Planning Area, after the
15 preparation of the first development and production
16 plan environmental impact statement for a leased
17 tract within the Area, future development and pro-
18 duction plans for leased tracts within the Area shall
19 only require the preparation of an environmental as-
20 sessment unless the most recent development and
21 production plan environmental impact statement
22 within the Area was finalized more than 10 years
23 prior to the date of the approval of the plan, in
24 which case an environmental impact statement shall
25 be required.”.

1 **SEC. 341. FEDERAL ENERGY NATURAL RESOURCES EN-**
2 **HANCEMENT ACT OF 2008.**

3 (a) **SHORT TITLE.**—This section may be cited as the
4 “Federal Energy Natural Resources Enhancement Act of
5 2008”.

6 (b) **FINDINGS.**—The Congress finds the following:

7 (1) Energy and minerals exploration, develop-
8 ment, and production on Federal onshore and off-
9 shore lands, including bio-based fuel, natural gas,
10 minerals, oil, geothermal, and power from wind,
11 waves, currents, and thermal energy, involves signifi-
12 cant outlays of funds by Federal and State wildlife,
13 fish, and natural resource management agencies for
14 environmental studies, planning, development, moni-
15 toring, and management of wildlife, fish, air, water,
16 and other natural resources.

17 (2) State wildlife, fish, and natural resource
18 management agencies are funded primarily through
19 permit and license fees paid to the States by the
20 general public to hunt and fish, and through Federal
21 excise taxes on equipment used for these activities.

22 (3) Funds generated from consumptive and rec-
23 reational uses of wildlife, fish, and other natural re-
24 sources currently are inadequate to address the nat-
25 ural resources related to energy and minerals devel-
26 opment on Federal onshore and offshore lands.

1 (4) Funds available to Federal agencies respon-
2 sible for managing Federal onshore and offshore
3 lands and Federal-trust wildlife and fish species and
4 their habitats are inadequate to address the natural
5 resources related to energy and minerals develop-
6 ment on Federal onshore and offshore lands.

7 (5) Receipts derived from sales, bonus bids, and
8 royalties under the mineral leasing laws of the
9 United States are paid to the Treasury through the
10 Minerals Management Service of the Department of
11 the Interior.

12 (6) None of the receipts derived from sales,
13 bonus bids, and royalties under the minerals leasing
14 laws of the United States are paid to the Federal or
15 State agencies to examine, monitor, and manage
16 wildlife, fish, air, water, and other natural resources
17 related to natural gas, oil, and mineral exploration
18 and development.

19 (c) PURPOSES.—It is the purpose of this section to—

20 (1) authorize expenditures for the monitoring
21 and management of wildlife and fish, and their habi-
22 tats, and air, water, and other natural resources re-
23 lated to energy and minerals development on Fed-
24 eral onshore and offshore lands;

1 (2) authorize expenditures for each fiscal year
2 to the Secretary of the Interior and the States; and

3 (3) use the appropriated funds to secure the
4 necessary trained workforce or contractual services
5 to conduct environmental studies, planning, develop-
6 ment, monitoring, and post-development manage-
7 ment of wildlife and fish and their habitats and air,
8 water, and other natural resources that may be re-
9 lated to bio-based fuel, gas, mineral, oil, wind, or
10 other energy exploration, development, transpor-
11 tation, transmission, and associated activities on
12 Federal onshore and offshore lands, including, but
13 not limited to—

14 (A) pertinent research, surveys, and envi-
15 ronmental analyses conducted to identify any
16 impacts on wildlife, fish, air, water, and other
17 natural resources from energy and mineral ex-
18 ploration, development, production, and trans-
19 portation or transmission;

20 (B) projects to maintain, improve, or en-
21 hance wildlife and fish populations and their
22 habitats or air, water, or other natural re-
23 sources, including activities under the Endan-
24 gered Species Act of 1973;

1 (C) research, surveys, environmental anal-
2 yses, and projects that assist in managing, in-
3 cluding mitigating either onsite or offsite, or
4 both, the impacts of energy and mineral activi-
5 ties on wildlife, fish, air, water, and other nat-
6 ural resources; and

7 (D) projects to teach young people to live
8 off the land.

9 (d) DEFINITIONS.—In this section:

10 (1) ENHANCEMENT PROGRAM.—The term “En-
11 hancement Program” means the Federal Energy
12 Natural Resources Enhancement Program estab-
13 lished by this section.

14 (2) STATE.—The term “State” means the Gov-
15 ernor of the State.

16 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to carry out the Enhance-
18 ment Program \$150,000,000 for each of fiscal years 2009
19 through 2019.

20 (f) ESTABLISHMENT OF FEDERAL ENERGY NAT-
21 URAL RESOURCES ENHANCEMENT PROGRAM.—

22 (1) IN GENERAL.—There is established the
23 Federal Energy Natural Resources Enhancement
24 Program.

1 (2) PAYMENT TO SECRETARY OF THE INTE-
2 RIOR.—Beginning with fiscal year 2009, and in each
3 fiscal year thereafter, one-third of amounts appro-
4 priated for the Enhancement Program shall be avail-
5 able to the Secretary of the Interior for use for the
6 purposes described in subsection (c)(3).

7 (3) PAYMENT TO STATES.—

8 (A) IN GENERAL.—Beginning with fiscal
9 year 2009, and in each fiscal year thereafter,
10 two-thirds of amounts appropriated for the En-
11 hancement Program shall be available to the
12 States for use for the purposes described in
13 (c)(3).

14 (B) USE OF PAYMENTS BY STATE.—Each
15 State shall use the payments made under this
16 paragraph only for carrying out projects and
17 programs for the purposes described in (c)(3).

18 (C) ENCOURAGE USE OF PRIVATE FUNDS
19 BY STATE.—Each State shall use the payments
20 made under this paragraph to leverage private
21 funds for carrying out projects for the purposes
22 described in (c)(3).

23 (g) LIMITATION ON USE.—Amounts made available
24 under this section may not be used for the purchase of
25 any interest in land.

1 (h) REPORTS TO CONGRESS.—

2 (1) IN GENERAL.—Beginning in fiscal year
3 2010 and continuing for each fiscal year thereafter,
4 the Secretary of the Interior and each State receiv-
5 ing funds from the Enhancement Fund shall submit
6 a report to the Committee on Energy and Natural
7 Resources of the Senate and the Committee on Re-
8 sources of the House of Representatives.

9 (2) REQUIRED INFORMATION.—Reports sub-
10 mitted to the Congress by the Secretary of the Inte-
11 rior and States under this subsection shall include
12 the following information regarding expenditures
13 during the previous fiscal year:

14 (A) A summary of pertinent scientific re-
15 search and surveys conducted to identify im-
16 pacts on wildlife, fish, and other natural re-
17 sources from energy and mineral developments.

18 (B) A summary of projects planned and
19 completed to maintain, improve or enhance
20 wildlife and fish populations and their habitats
21 or other natural resources.

22 (C) A list of additional actions that assist,
23 or would assist, in managing, including miti-
24 gating either onsite or offsite, or both, the im-

1 pacts of energy and mineral development on
2 wildlife, fish, and other natural resources.

3 (D) A summary of private (non-Federal)
4 funds used to plan, conduct, and complete the
5 plans and programs identified in subparagraphs
6 (A) and (B).

7 **SEC. 342. TERMINATION OF EFFECT OF LAWS PROHIBITING**
8 **THE SPENDING OF APPROPRIATED FUNDS**
9 **FOR CERTAIN PURPOSES.**

10 All provisions of existing Federal law prohibiting the
11 spending of appropriated funds to conduct oil and natural
12 gas leasing and preleasing activities, or to issue a lease
13 to any person, for any area of the outer Continental Shelf
14 shall have no force or effect.

15 **SEC. 343. OUTER CONTINENTAL SHELF INCOMPATIBLE**
16 **USE.**

17 (a) IN GENERAL.—No Federal agency may permit
18 construction or operation (or both) of any facility, or des-
19 ignate or maintain a restricted transportation corridor or
20 operating area on the Federal outer Continental Shelf or
21 in State waters, that will be incompatible with, as deter-
22 mined by the Secretary of the Interior, oil and gas or nat-
23 ural gas leasing and substantially full exploration and pro-
24 duction of tracts that are geologically prospective for oil
25 or natural gas (or both).

1 (b) EXCEPTIONS.—Subsection (a) shall not apply to
2 any facility, transportation corridor, or operating area the
3 construction, operation, designation, or maintenance of
4 which is or will be—

5 (1) located in an area of the outer Continental
6 Shelf that is unavailable for oil and gas or natural
7 gas leasing by operation of law;

8 (2) used for a military readiness activity (as de-
9 fined in section 315(f) of Public Law 107–314; 16
10 U.S.C. 703 note); or

11 (3) required in the national interest, as deter-
12 mined by the President.

13 **SEC. 344. REPURCHASE OF CERTAIN LEASES.**

14 (a) AUTHORITY TO REPURCHASE AND CANCEL CER-
15 TAIN LEASES.—The Secretary of the Interior shall repur-
16 chase and cancel any Federal oil and gas, geothermal,
17 coal, oil shale, tar sands, or other mineral lease, whether
18 onshore or offshore, but not including any outer Conti-
19 nental Shelf oil and gas leases that are subject to litigation
20 in the Court of Federal Claims on January 1, 2006, if
21 the Secretary finds that such lease qualifies for repurchase
22 and cancellation under the regulations authorized by this
23 section.

24 (b) REGULATIONS.—Not later than 365 days after
25 the date of the enactment of this Act, the Secretary shall

1 publish a final regulation stating the conditions under
2 which a lease referred to in subsection (a) would qualify
3 for repurchase and cancellation, and the process to be fol-
4 lowed regarding repurchase and cancellation. Such regula-
5 tion shall include, but not be limited to, the following:

6 (1) The Secretary shall repurchase and cancel
7 a lease after written request by the lessee upon a
8 finding by the Secretary that—

9 (A) a request by the lessee for a required
10 permit or other approval complied with applica-
11 ble law, except the Coastal Zone Management
12 Act of 1972 (16 U.S.C. 1451 et seq.), and
13 terms of the lease and such permit or other ap-
14 proval was denied;

15 (B) a Federal agency failed to act on a re-
16 quest by the lessee for a required permit, other
17 approval, or administrative appeal within a reg-
18 ulatory or statutory time-frame associated with
19 the requested action, whether advisory or man-
20 datory, or if none, within 180 days; or

21 (C) a Federal agency attached a condition
22 of approval, without agreement by the lessee, to
23 a required permit or other approval if such con-
24 dition of approval was not mandated by Federal
25 statute or regulation in effect on the date of

1 lease issuance, or was not specifically allowed
2 under the terms of the lease.

3 (2) A lessee shall not be required to exhaust ad-
4 ministrative remedies regarding a permit request,
5 administrative appeal, or other required request for
6 approval for the purposes of this section.

7 (3) The Secretary shall make a final agency de-
8 cision on a request by a lessee under this section
9 within 180 days of request.

10 (4) Compensation to a lessee to repurchase and
11 cancel a lease under this section shall be the amount
12 that a lessee would receive in a restitution case for
13 a material breach of contract.

14 (5) Compensation shall be in the form of a
15 check or electronic transfer from the Department of
16 the Treasury from funds deposited into miscella-
17 neous receipts under the authority of the same Act
18 that authorized the issuance of the lease being re-
19 purchased.

20 (6) Failure of the Secretary to make a final
21 agency decision on a request by a lessee under this
22 section within 180 days of request shall result in a
23 10 percent increase in the compensation due to the
24 lessee if the lease is ultimately repurchased.

1 (c) NO PREJUDICE.—This section shall not be inter-
2 preted to prejudice any other rights that the lessee would
3 have in the absence of this section.

4 **SEC. 345. OFFSITE ENVIRONMENTAL MITIGATION.**

5 Notwithstanding any other provision of law, any per-
6 son conducting activities under the Mineral Leasing Act
7 (30 U.S.C. 181 et seq.), the Geothermal Steam Act (30
8 U.S.C. 1001 et seq.), the Mineral Leasing Act for Ac-
9 quired Lands (30 U.S.C. 351 et seq.), the Weeks Act (16
10 U.S.C. 552 et seq.), the General Mining Act of 1872 (30
11 U.S.C. 22 et seq.), the Materials Act of 1947 (30 U.S.C.
12 601 et seq.), or the Outer Continental Shelf Lands Act
13 (43 U.S.C. 1331 et seq.), may in satisfying any mitigation
14 requirements associated with such activities propose miti-
15 gation measures on a site away from the area impacted
16 and the Secretary of the Interior shall accept these pro-
17 posed measures if the Secretary finds that they generally
18 achieve the purposes for which mitigation measures apper-
19 tained.

20 **SEC. 346. MINERALS MANAGEMENT SERVICE.**

21 The bureau known as the “Minerals Management
22 Service” in the Department of the Interior shall be known
23 as the “National Ocean Resources and Royalty Service”.

1 **SEC. 347. AUTHORITY TO USE DECOMMISSIONED OFF-**
2 **SHORE OIL AND GAS PLATFORMS AND**
3 **OTHER FACILITIES FOR ARTIFICIAL REEF,**
4 **SCIENTIFIC RESEARCH, OR OTHER USES.**

5 (a) **SHORT TITLE.**—This section may be cited as the
6 “Rigs to Reefs Act of 2008”.

7 (b) **IN GENERAL.**—The Outer Continental Shelf
8 Lands Act (43 U.S.C. 1301 et seq.) is amended by insert-
9 ing after section 9 the following:

10 **“SEC. 10. USE OF DECOMMISSIONED OFFSHORE OIL AND**
11 **GAS PLATFORMS AND OTHER FACILITIES**
12 **FOR ARTIFICIAL REEF, SCIENTIFIC RE-**
13 **SEARCH, OR OTHER USES.**

14 “(a) **IN GENERAL.**—The Secretary shall issue regula-
15 tions under which the Secretary may authorize use of an
16 offshore oil and gas platform or other facility that is de-
17 commissioned from service for oil and gas purposes for
18 an artificial reef, scientific research, or any other use au-
19 thorized under section 8(p) or any other applicable Fed-
20 eral law.

21 “(b) **TRANSFER REQUIREMENTS.**—The Secretary
22 shall not allow the transfer of a decommissioned offshore
23 oil and gas platform or other facility to another person
24 unless the Secretary is satisfied that the transferee is suf-
25 ficiently bonded, endowed, or otherwise financially able to
26 fulfill its obligations, including but not limited to—

1 “(1) ongoing maintenance of the platform or
2 other facility;

3 “(2) any liability obligations that might arise;

4 “(3) removal of the platform or other facility if
5 determined necessary by the Secretary; and

6 “(4) any other requirements and obligations
7 that the Secretary may deem appropriate by regula-
8 tion.

9 “(c) PLUGGING AND ABANDONMENT.—The Sec-
10 retary shall ensure that plugging and abandonment of
11 wells is accomplished at an appropriate time.

12 “(d) POTENTIAL TO PETITION TO OPT-OUT OF REG-
13 ULATIONS.—An Adjacent State acting through a resolu-
14 tion of its legislature, with concurrence of its Governor,
15 may preliminarily petition to opt-out of the application of
16 regulations promulgated under this section to platforms
17 and other facilities located in the area of its Adjacent Zone
18 within 12 miles of the coastline. Upon receipt of the pre-
19 liminary petition, the Secretary shall complete an environ-
20 mental assessment that documents the anticipated envi-
21 ronmental effects of approving the petition. The Secretary
22 shall provide the environmental assessment to the State,
23 which then has the choice of no action or confirming its
24 petition by further action of its legislature, with the con-
25 currence of its Governor. The Secretary is authorized to

1 except such area from the application of such regulations,
2 and shall approve any confirmed petition.

3 “(e) LIMITATION ON LIABILITY.—A person that had
4 used an offshore oil and gas platform or other facility for
5 oil and gas purposes and that no longer has any ownership
6 or control of the platform or other facility shall not be
7 liable under Federal law for any costs or damages arising
8 from such platform or other facility after the date the plat-
9 form or other facility is used for any purpose under sub-
10 section (a), unless such costs or damages arise from—

11 “(1) use of the platform or other facility by the
12 person for development or production of oil or gas;
13 or

14 “(2) another act or omission of the person.

15 “(f) OTHER LEASING AND USE NOT AFFECTED.—
16 This section, and the use of any offshore oil and gas plat-
17 form or other facility for any purpose under subsection
18 (a), shall not affect—

19 “(1) the authority of the Secretary to lease any
20 area under this Act; or

21 “(2) any activity otherwise authorized under
22 this Act.”.

23 (c) DEADLINE FOR REGULATIONS.—The Secretary of
24 the Interior shall issue regulations under subsection (b)

1 by not later than 180 days after the date of the enactment
2 of this Act.

3 (d) **STUDY AND REPORT ON EFFECTS OF REMOVAL**
4 **OF PLATFORMS.**—Not later than one year after the date
5 of enactment of this Act, the Secretary of the Interior,
6 in consultation with other Federal agencies as the Sec-
7 retary deems advisable, shall study and report to the Con-
8 gress regarding how the removal of offshore oil and gas
9 platforms and other facilities from the outer Continental
10 Shelf would affect existing fish stocks and coral popu-
11 lations.

12 **SEC. 348. REPEAL OF REQUIREMENT TO CONDUCT COM-**
13 **PREHENSIVE INVENTORY OF OCS OIL AND**
14 **NATURAL GAS RESOURCES.**

15 The Energy Policy Act of 2005 (Public Law 109–
16 58) is amended—

17 (1) by repealing section 357 (119 Stat. 720; 42
18 U.S.C. 15912); and

19 (2) in the table of contents in section 1(b), by
20 striking the item relating to such section 357.

21 **SEC. 349. LEASES FOR AREAS LOCATED WITHIN 100 MILES**
22 **OF CALIFORNIA OR FLORIDA.**

23 (a) **AUTHORIZATION TO CANCEL AND EXCHANGE**
24 **CERTAIN EXISTING OIL AND GAS LEASES; PROHIBITION**

1 ON SUBMITTAL OF EXPLORATION PLANS FOR CERTAIN
2 LEASES PRIOR TO JUNE 30, 2012.—

3 (1) AUTHORITY.—Within 2 years after the date
4 of enactment of this Act, the lessee of an existing oil
5 and gas lease for an area located completely within
6 100 miles of the coastline within the California or
7 Florida Adjacent Zones shall have the option, with-
8 out compensation, of exchanging such lease for a
9 new oil and gas lease having a primary term of 5
10 years. For the area subject to the new lease, the les-
11 see may select any unleased tract on the outer Con-
12 tinental Shelf that is in an area available for leasing.
13 Further, with the permission of the relevant Gov-
14 ernor, such a lessee may convert its existing oil and
15 gas lease into a natural gas lease having a primary
16 term of 5 years and covering the same area as the
17 existing lease or another area within the same
18 State's Adjacent Zone within 100 miles of the coast-
19 line.

20 (2) ADMINISTRATIVE PROCESS.—The Secretary
21 of the Interior shall establish a reasonable adminis-
22 trative process to implement paragraph (1). Ex-
23 changes and conversions under subsection (a), in-
24 cluding the issuance of new leases, shall not be con-
25 sidered to be major Federal actions for purposes of

1 the National Environmental Policy Act of 1969 (42
2 U.S.C. 4321 et seq.). Further, such actions con-
3 ducted in accordance with this section are deemed to
4 be in compliance all provisions of the Outer Conti-
5 nental Shelf Lands Act (43 U.S.C. 1331 et seq.).

6 (3) OPERATING RESTRICTIONS.—A new lease
7 issued in exchange for an existing lease under this
8 section shall be subject to such national defense op-
9 erating stipulations on the OCS tract covered by the
10 new lease as may be applicable upon issuance.

11 (4) PRIORITY.—The Secretary shall give pri-
12 ority in the lease exchange process based on the
13 amount of the original bonus bid paid for the
14 issuance of each lease to be exchanged. The Sec-
15 retary shall allow leases covering partial tracts to be
16 exchanged for leases covering full tracts conditioned
17 upon payment of additional bonus bids on a per-acre
18 basis as determined by the average per acre of the
19 original bonus bid per acre for the partial tract
20 being exchanged.

21 (5) EXPLORATION PLANS.—Any exploration
22 plan submitted to the Secretary of the Interior after
23 the date of the enactment of this Act and before
24 July 1, 2012, for an oil and gas lease for an area
25 wholly within 100 miles of the coastline within the

1 California Adjacent Zone or Florida Adjacent Zone
2 shall not be treated as received by the Secretary
3 until the earlier of July 1, 2012, or the date on
4 which a petition by the Adjacent State for oil and
5 gas leasing covering the area within which is located
6 the area subject to the oil and gas lease was ap-
7 proved.

8 (b) FURTHER LEASE CANCELLATION AND EX-
9 CHANGE PROVISIONS.—

10 (1) CANCELLATION OF LEASE.—As part of the
11 lease exchange process under this section, the Sec-
12 retary shall cancel a lease that is exchanged under
13 this section.

14 (2) CONSENT OF LESSEES.—All lessees holding
15 an interest in a lease must consent to cancellation
16 of their leasehold interests in order for the lease to
17 be cancelled and exchanged under this section.

18 (3) WAIVER OF RIGHTS.—As a prerequisite to
19 the exchange of a lease under this section, the lessee
20 must waive any rights to bring any litigation against
21 the United States related to the transaction.

22 (4) PLUGGING AND ABANDONMENT.—The plug-
23 ging and abandonment requirements for any wells
24 located on any lease to be cancelled and exchanged

1 under this section must be complied with by the les-
2 sees prior to the cancellation and exchange.

3 (c) AREA PARTIALLY WITHIN 100 MILES OF FLOR-
4 IDA.—An existing oil and gas lease for an area located
5 partially within 100 miles of the coastline within the Flor-
6 ida n Adjacent Zone may only be developed and produced
7 using wells drilled from well-head locations at least 100
8 miles from the coastline to any bottom-hole location on
9 the area of the lease. This subsection shall not apply if
10 Florida has petitioned for leasing closer to the coastline
11 than 100 miles.

12 (d) EXISTING OIL AND GAS LEASE DEFINED.—In
13 this section the term “existing oil and gas lease” means
14 an oil and gas lease in effect on the date of the enactment
15 of this Act.

16 **SEC. 350. COASTAL IMPACT ASSISTANCE.**

17 Section 31 of the Outer Continental Shelf Lands Act
18 (43 U.S.C. 1356a) is repealed.

19 **SEC. 351. OIL SHALE AND TAR SANDS AMENDMENTS.**

20 (a) REPEAL OF REQUIREMENT TO ESTABLISH PAY-
21 MENTS.—Section 369(o) of the Energy Policy Act of 2005
22 (Public Law 109–58; 119 Stat. 728; 42 U.S.C. 15927)
23 is repealed.

1 (b) TREATMENT OF REVENUES.—Section 21 of the
2 Mineral Leasing Act (30 U.S.C. 241) is amended by add-
3 ing at the end the following:

4 “(e) REVENUES.—

5 “(1) IN GENERAL.—Notwithstanding the provi-
6 sions of section 35, all revenues received from and
7 under an oil shale or tar sands lease shall be dis-
8 posed in the Treasury as miscellaneous receipts.

9 “(2) ROYALTY RATES FOR COMMERCIAL
10 LEASES.—

11 “(A) ROYALTY RATES.—The Secretary
12 shall model the royalty schedule for oil shale
13 and tar sands leases based on the royalty pro-
14 gram currently in effect for the production of
15 synthetic crude oil from oil sands in the Prov-
16 ince of Alberta, Canada.

17 “(B) REDUCTION.—The Secretary shall re-
18 duce any royalty otherwise required to be paid
19 under subparagraph (A) under any oil shale or
20 tar sands lease on a sliding scale based upon
21 market price, with a 10 percent reduction if the
22 average futures price of NYMEX Light Sweet
23 Crude, or a similar index, drops, for the pre-
24 vious quarter year, below \$50 (in January 1,
25 2006, dollars), and an 80 percent reduction if

1 the average price drops below \$30 (in January
2 1, 2006, dollars) for the quarter previous to the
3 one in which the production is sold.”.

4 **TITLE IV—REPEAL OF REQUIRE-**
5 **MENT WITH RESPECT TO THE**
6 **PROCUREMENT AND ACQUI-**
7 **SION OF ALTERNATIVE**
8 **FUELS**

9 **SEC. 401. REPEAL OF REQUIREMENT WITH RESPECT TO**
10 **THE PROCUREMENT AND ACQUISITION OF**
11 **ALTERNATIVE FUELS.**

12 Section 526 of the Energy Independence and Security
13 Act of 2007 (42 U.S.C. 17142) is repealed.

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