**D R A F T**

 3/7/95

 **AN ACT**

 **UNITED STATES PETROLEUM RESERVES CORPORATION**

To amend the Naval Petroleum Reserves Production Act of 1976 to establish the United States Petroleum Reserves Corporation on a profitable and efficient basis in order to maximize the long term economic value to the United States, to promote the conservation and development and use of the petroleum and oil shale reserves and continue to meet the paramount objectives of safeguarding the national defense and security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Petroleum Reserves Corporation Act of 1995."

 **CHAPTER 1. SHORT TITLE; FINDINGS**

SEC. 101. SHORT TITLE. - This Act may be cited

as the "Petroleum Reserves Corporation Act of 1995."

SEC. 102. FINDINGS. - The Congress of the United States finds that:

(a) The ownership and efficient operation of Naval Petroleum Reserves numbered 1, 2 and 3 and Oil Shale Reserves numbered 1, 2, and 3 are essential to the national security and energy security of the United States.

(b) A competitive, well-managed operation of the petroleum and oil shale reserves provides important economic benefits to the United States.

(c) The operation of United States petroleum and oil shale reserves must meet high standards for the protection of the environment and the health and safety of the public and employees.

(d) The operation and management of the petroleum and oil shale reserves requires much of the flexibility of a commercial business in order to function effectively in a competitive market and to maximize the return on the United States government's investment.

(e) The present management and operation of the petroleum and oil shale reserves must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security and maximizing the return to the Treasury.

**CHAPTER 2. DEFINITIONS, ESTABLISHMENT**

 **OF CORPORATION AND PURPOSES**

SEC. 201. DEFINITIONS. - For the purpose of this Act:

(a) The term "Secretary" means the Secretary of Energy.

(b) The term "Department" means the Department of Energy of the United States.

(c) The term "Administrator" means the chief executive officer of the United States Petroleum Reserves Corporation.

(d) The term "Corporation" means the United States Petroleum Reserves Corporation.

(e) The terms "Board of Directors" and "Board" mean the board of directors of the United States Petroleum Reserves Corporation.

SEC. 202. ESTABLISHMENT OF THE CORPORATION.-

(a) There is hereby created within the Executive Branch of government a body corporate to be known as the "United States Petroleum Reserves Corporation".

(b) The Corporation shall -

(1) be established as a wholly owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. Sections 9101-9109), except as otherwise provided herein; and

(2) be an agency of the United States.

SEC. 203. PURPOSES. - The Corporation is created for the following purposes-

(a) to explore, conserve, develop, operate and otherwise manage the naval petroleum and oil shale reserves;

(b) to market and sell or otherwise dispose of petroleum and petroleum products and related services;

(c) to conduct research and development

as required to meet corporate objectives;

(d) to operate as a commercial enterprise

 on a profitable and efficient basis in order to

maximize the long term economic value of the Corporation

to the United States Government, including the payment of dividends to the Treasury as a return on the United States Government investment;

(e) to conduct its activities in a manner consistent with the protection of the environment and of the health and safety of the public;

(f) to take all other lawful action in furtherance of the foregoing purposes.

**CHAPTER 3. CORPORATE OFFICES**

SEC. 301. CORPORATE OFFICES. - The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

**CHAPTER 4. POWERS AND DUTIES OF THE CORPORATION**

SEC. 401. SPECIFIC CORPORATE POWERS AND DUTIES. -The Corporation shall have the powers and carry out the functions and duties that are authorized by law with respect to exploration, prospecting, conservation, development, use, operation and management of the naval petroleum and oil shale reserves, and such other powers and functions and duties as are authorized by Chapter 641 of Title 10, United States Code, and other laws applicable to the naval petroleum and oil shale reserves. When directed by the Secretary of Defense, the Corporation shall give priority in its activities to providing assistance in matters relating to national security. The Corporation shall make a semiannual report to the Secretary of Defense on production, availability and prevailing market prices of all categories of hydrocarbon production by the Corporation and shall at the same time furnish a copy of that report to the director of the Defense Logistics Agency (or any successor organization).

SEC. 402. GENERAL POWERS OF THE CORPORATION. - In order to accomplish the purposes of this Act, the Corporation-

(a) shall have succession until September 30, 2005, unless otherwise provided by Act of Congress;

(b) may adopt, alter, and use a corporate seal,

which shall be judicially noticed;

(c) may sue and be sued in its corporate name and be represented by its own attorneys in all administrative and judicial proceedings, including, with the prior approval of the Attorney General, appeals from decisions of federal courts;

(d) may indemnify the members of the Board of Directors, Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities.

(e) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed;

(f) (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this Act and without regard to the Federal Property and Administrative Services Act of 1949, as amended;

(2) shall make purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition: *Provided*, that advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this Act, or that advertising is not reasonably practicable;

(g) with the consent of the agency or government concerned, may utilize or employ the services, records, facilities or personnel of any State or local government agency or instrumentality, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

(h) may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

(i) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this Act and other provisions of law specifically applicable to wholly owned Government corporations;

(j) may retain and utilize its revenues for any of the purposes of the Corporation, including research and development and capital investment. Corporate funds shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code;

(k) may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation; *Provided however,* that, for purposes of the Contract Disputes Act of 1978, the Administrator shall be deemed to be the agency head with respect to contract claims arising with respect to the Corporation;

(l) may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

(m) shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

(n) may define appropriate information as "Government Commercial Information" and exempt such information from mandatory release pursuant to section 552(b)(3) of title 5, United States Code, when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

(o) may obtain from the Administrator of General Services such services as he or she is authorized to provide to agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(p) may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized;

(q) may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers;

(r) may provide for liability insurance either by contract or by self-insurance; and

(s) shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the judgment fund (31 U.S.C. Section 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. Sections 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute.

SEC. 403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS, AND REGULATIONS. -

(a) Except as provided elsewhere in this Act, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the enactment of this Act and that relate to naval petroleum and oil shale reserves, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

(b) As related to the functions vested in the Corporation by this Act, after 180 days from the date of enactment of this Act, all orders, determinations, rules, regulations and privileges of the Department shall cease to apply to the Corporation, except for those for which the Corporation makes a determination that they should be applicable, and except as specifically provided in this Act.

(c) Except as provided elsewhere in this Act, the transfer of functions related to and vested in the Corporation by this Act shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this Act takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

SEC. 404. LIABILITIES. - Except as provided elsewhere in this Act, all liabilities attributable to operation of the naval petroleum and oil shale reserves prior to the date of the enactment of this Act shall be direct liabilities of the Corporation.

SEC. 405. CONTRIBUTIONS TO RETIREMENT AND DISABILITY AND EMPLOYEES' COMPENSATION FUNDS. - The Corporation shall contribute to the civil service retirement and disability fund, on the basis of annual billings as determined by the Office of Personnel Management, for the Government's share of the cost of the civil service retirement system applicable to the Corporation's employees and their beneficiaries. The Corporation shall also contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of the Corporation's employees. The annual billings shall also include a statement of the fair portion of the cost of administration of the respective funds, which shall be paid into the Treasury as miscellaneous receipts.

**CHAPTER 5. ORGANIZATION, FINANCE AND MANAGEMENT**

SEC. 501. ADMINISTRATOR. -

(a) The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; *Provided, however,* that upon enactment of this Act, the President may appoint an existing officer or employee of the United States to act as Administrator until the office is filled pursuant to this section.

(b) The Administrator-

(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall report directly to the Board of Directors on matters concerning the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

(2) shall serve a term of six years, and such period of time thereafter until a successor is appointed and assumes office. The Administrator may be reappointed;

(3) shall, before taking office, take an oath to discharge faithfully the duties thereof;

(4) shall have compensation set at Executive Level III, as prescribed in section 5314 of title 5, United States Code;

(5) shall be a citizen of the United States; and

(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity.

SEC. 502. DELEGATION. - The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this Act.

SEC. 503. BOARD OF DIRECTORS. - There is hereby established a Board of Directors of the Corporation, which shall consist of five members appointed by the President of the United States, by and with the advice and consent of the Senate. The President shall designate one of the members to chair the Board. Members of the Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in petroleum exploration and development, engineering, business or finance. Each member of the Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party.

(a) The specific responsibilities of the Corporate Advisory Board shall be to-

(1) review the Corporation's policies and performance and advise the Administrator; and (2) advise the Administrator on any other such matters concerning the Corporation as may be referred to the Board.

(b) Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board any financial records, reports, files, and papers, and memoranda of, or in use by, the Corporation.

(c) Of those first appointed, one member shall serve for a full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year. Upon expiration of the initial term, each Board member appointed thereafter shall serve a term of five years. Members of the Board may be reappointed. Upon the occurrence of a vacancy on the Board, the President of the United States shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of his or her term, a Board member may continue to serve up to a maximum of one year, or until a successor shall have been appointed and assumed office, whichever occurs first.

(d) In executing their duties the members of the Board shall be governed by the laws and regulations regarding conflicts of interest.

(e) The Board shall meet at any time pursuant to the call of the Chair and as provided by the bylaws of the Corporation, but not less than quarterly.

(f) Members of the Board shall serve on a part-time basis and shall be compensated at a per diem rate equivalent to Executive Level III, as defined in section 5314 of title 5, United States Code, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Board. Any Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

(g) (1) The Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate.

(2) Within ninety days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such response shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmitted promptly to the President of the United States and to the Congress.

SEC. 504. EMPLOYEES OF THE CORPORATION. -

Officers and employees of the Corporation shall be officers and employees of the United States:

(a) The Administrator shall appoint and fix the compensation, in accordance with the provisions of the Federal civil service and classification laws, of such officers and employees (including attorneys) and agents of the Corporation as are deemed necessary to effect the provisions of this Act, define their authority and duties, and delegate to them such of the powers vested in the Corporation as the Administrator may decide without regard to any administratively imposed limits on the number or grade of personnel, and any such officer, employee or agent shall be subject to the supervision only of the Administrator.

(b) No employee who transfers to the Corporation under this Act shall, for a period of one year after the date of enactment of this Act, be subject to separation or to any reduction in classification or compensation (including benefits) as a consequence of such transfer.

SEC. 505. TRANSFERS TO THE CORPORATION. - In order to enable the Corporation to exercise the powers and duties vested in it by this Act:

(a) The Secretary is authorized and directed, without need of further appropriation, to transfer to the Corporation the property, assets, contracts, records, unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable and including all advance payments), and accounts receivable which are related to functions which are vested in the Corporation by or pursuant to this Act.

(b) The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or by the United States but under control or custody of the Department, which the Secretary deems to be related to and materially useful in the performance of the functions transferred by this Act.

 (c) The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as the President may from time to time deem necessary and proper for achieving the purposes of this Act.

(d) There are hereby transferred to and vested in the Corporation all functions, powers, and duties of the Secretary of Energy, except as otherwise expressly provided by this Act, under the following laws and provisions of law relating generally to the naval petroleum and oil shale reserves:

(1) Chapter 641 of title 10, United States Code, as amended.

(2) Sections 7156 and 7156a of title 42, United States Code, as amended.

(3) Section 6240 of title 42, United States Code, as amended.

(4) Section 236a of title 30, United States Code, as amended.

 SEC. 506. BUDGET; DIVIDENDS. - In preparing its annual budget pursuant to the provisions of section 9103, title 31, United States Code, the Corporation shall make specific provision for payment into the United States Treasury of dividends on the government's investment.

 SEC. 507. BORROWING. - The Corporation is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (collectively referred to as "obligations") in an amount not exceeding $ 400 million outstanding at any one time, to assist in financing its activities. Such obligations shall be redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Corporation with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Corporation issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Corporation and repayments thereof by the Corporation shall be treated as public-debt transactions of the United States.

 SEC. 508. AUDITS. -

 (a) Financial statements of the Corporation shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant chosen by the Secretary. The audit shall be conducted in accordance with accounting standards established by the Comptroller General. Such audit standards shall be consistent with the private sector's generally accepted auditing standards.

 (b) The Comptroller General may review any

audit of the Corporation's financial statements conducted under subsection (a). The Comptroller General shall report to the Congress and the Corporation the results of any such review and shall include in such report appropriate recommendations.

 (c) The Comptroller General may audit the financial statements of the Corporation and such audit may be in lieu of the audit required by subsection (a). The Corporation shall reimburse the Comptroller General for the cost of any audit conducted under this subsection.

 (d) All books, financial records, report files, memoranda, and other property that the Comptroller General deems necessary for the performance of any audit shall be made available to the Comptroller General.

 (e) This provision shall apply to the Corporation in place of the provisions of Section 9105 of title 31, United States Code, which shall not apply.

 SEC. 509. MANAGEMENT REPORTS. -

 The Corporation shall prepare and submit to the Congress an annual management report as required by the Government Corporation Control Act of 1945, Section 9106 of title 31, United States Code, as amended.

  **CHAPTER 6. MISCELLANEOUS; HEALTH, SAFETY**

 **ENVIRONMENT; COOPERATION**

 SEC. 601. MISCELLANEOUS PROVISIONS. -

 (a) In order to render financial assistance to those States and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed to make payments to State and local governments as provided in this section. Such payments shall be in lieu of any and all State and local taxes on the real and personal property, activities, and income of the Corporation. All property of the Corporation, its activities and income are expressly exempted from taxation in any manner or form by any State, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate, and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts and such income shall not be exempt from taxation.

 (b) The Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the State and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location: *Provided, however,* That there shall be excluded any amount that would be payable as a tax on net income.

 (2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

(c) Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable: *Provided,* That no payment shall be made to the extent that the tax would apply to a period prior to the enactment of this Act.

 (d) The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

 SEC. 602. HEALTH, SAFETY, ENVIRONMENT. -

 The Corporation shall be subject to all laws and regulations of the Federal Government and State and local governments relating to health, safety and environmental protection, but only to the extent that such laws and regulations would be applicable to a private industrial corporation owning similar facilities and engaging in similar activities in those locations where the Corporation's facilities and activities are situated.

 SEC. 603. COOPERATION WITH OTHER AGENCIES. -

 (a) The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation.

 (b) The Secretary of Defense is authorized, upon request of the United States Petroleum Reserves Corporation, to assign commissioned officers of the armed services on active duty to management positions within the Corporation. The detail of any personnel to the Corporation under this section shall in no way affect status, office, rank or grade which officers or enlisted personnel may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his or her armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

 **CHAPTER 7 - TECHNICAL AND CONFORMING AMENDMENTS**

 SEC. 701. WHOLLY-OWNED GOVERNMENT CORPORATION. -

Section 9101 (3) of title 31, United States Code, is amended by adding at the end thereof:

"(O) the United States Petroleum Reserves Corporation."

 SEC. 702. PROPERTY MANAGEMENT AND DISPOSAL. -

 Section 474 of title 40, United States Code, is

amended by adding a new Subsection (22), as follows:

"(22) the United States Petroleum Reserves Corporation,"

 SEC. 703. NAVAL PETROLEUM RESERVES PRODUCTION ACT -

Chapter 641 of title 10, United States Code is

 amended:

(a) by striking the word "Secretary", insofar as it refers to the Secretary of Energy, wherever it appears and inserting in lieu thereof "Corporation," and by striking the words "he," "his" or "him," insofar as they refer to the Secretary of Energy, wherever they appear and inserting in lieu thereof "it" or "its"; and

 (b) By striking out Sections 7432(b) and 7433(b) of title 10, United States Code.

 SEC. 704. OTHER LAWS -

 (a) Section 236a of title 30, United States Code is amended by striking the words "Secretary of the Navy" and inserting in lieu thereof "United States Petroleum Reserves Corporation".

(b) Section 7156 of title 42, United States Code is amended by striking the words "vested in the Secretary" in the first sentence and inserting in lieu thereof "vested in the United States Petroleum Reserves Corporation" and by striking the word "Secretary" each time it appears in the last sentence and inserting in lieu thereof "Corporation".

(c) Section 7156a of title 42, United States Code is repealed.

(d) Subsection (a) of Section 7235 of title 42, United States Code, is amended by striking the words "and under Chapter 641 of title 10".

**CHAPTER 8. SEPARABILITY**

SEC. 801 - If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.