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COASTAL AND ESTUARINE LAND PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S. 2608

OCTOBER 3, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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COASTAL AND ESTUARINE LAND PROTECTION ACT

OCTOBER 3, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 2608]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2608) to amend the Coastal Zone Management Act of 1972 to authorize the acquisition of coastal areas in order to better ensure their protection from conversion or development, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 2608, as reported, would amend the Coastal Zone Management Act of 1972 to authorize the acquisition of coastal areas through a competitive grants process in order to better ensure their protection from conversion or development.

BACKGROUND AND NEEDS

Estuaries, wetlands, and the watersheds that channel water into them, support fisheries and wildlife and contribute immensely to coastal area economies. These areas are critical to many life cycles of organisms and help improve surface water quality by filtering out wastes. Now more than ever, the pressures of urbanization and pollution along our Nation's coasts threaten to impair watersheds, impact wildlife habitat, and cause irreparable damage to fragile coastal ecosystems. As our population grows, more and more people are moving to the coast. More than 3,000 people move to coastal areas every day. By 2010, an estimated 60 percent of Americans are expected to live along our coasts, which represent less than 17 percent of our land area. Fourteen of the nation's 20 largest cities

are on the coast, and coastal cities are five times more densely populated than cities in the interior of the country.

The Coastal Zone Management Act (CZMA) of 1972 was enacted in order to provide clear policy objectives for states to establish coordinated coastal zone management programs and to help balance coastal development with protection. Since the CZMA became law, 34 of the 35 coastal States have established approved programs to help preserve and utilize their coastal resources, and the program has proven to be a successful partnership between the Federal government and States. One such tool established under the CZMA is the National Estuarine Research Reserves System (NERRs). The reserve system, as a network of 25 protected areas representing different biogeographic regions of the United States, protects more than one million acres of estuarine habitat, conducts essential research, and provides a variety of educational opportunities. Individual NERRs focus on local and regional research and educational needs. As a national network, many system-wide programs provide reserves with common research standards and educational goals.

Despite this and other successful partnership programs under CZMA, there is currently no Federal program that explicitly sets aside funding for conservation of coastal or estuarine lands, or for coordinating coastal conservation partnerships among Federal, State, and local governments, private landowners, and non-profit organizations. Partnership programs that protect coastal lands by purchasing such lands from a willing seller can be a cost-effective means of providing areas with permanent protection from development, and such programs are strongly supported by coastal States, which work with private land trusts and others to protect coastal property around the nation.

The ACE Basin partnership in South Carolina is only one example of this coordinated approach to coastal protection and conservation that has been the subject of growing interest around the nation. This 1988 partnership brought together the State of South Carolina, private landowners, non-profit groups such as the Nature Conservancy and Ducks Unlimited, and Federal partners like the National Oceanic and Atmospheric Administration's (NOAA) NERR program and the Fish and Wildlife Service. As a result of this coordinated approach to protection, this 350,000-acre area at the convergence of the Edisto, Ashepoo, and Combahee (ACE) rivers is now the largest pristine estuarine reserve on the East Coast.

The Coastal and Estuarine Land Protection Act is modeled on a similar program, the U.S. Forest Service's Forest Legacy Program, which provides grants to States to protect environmentally important forests threatened by conversion. S. 2608 would amend the CZMA to create a Coastal and Estuarine Land Protection program within NOAA through which States, NERR units, and their partners can apply for grants that are competitively awarded to acquire sensitive or threatened coastal lands. This program will focus specifically on protection of coastal and estuarine areas, which are now being affected by escalating coastal development pressures.

Recent reports have highlighted the urgent need for such a program. The 2001 National Coastal Condition Report, issued jointly by United States Environmental Protection Agency (USEPA), NOAA, the Department of Interior, and the Department of Agriculture, found that the greatest coastal threats were coastal wet-

land loss and eutrophication; both are conditions linked to coastal development pressures. Last year, the U.S. Forest Service's Southern Forest Resource Assessment projected that the southeast alone could lose about 12 million acres to urbanization between 1992 and 2020 and an additional 19 million acres between 2020 and 2040, much which is slated to occur along the coast.

LEGISLATIVE HISTORY

The CZMA was enacted in 1972 in order to preserve, protect, develop, and where possible, restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, and to encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and aesthetic values as well as the needs for compatible economic development.

On June 11, 2002, Chairman Hollings and Senator Gregg introduced S. 2608, the Coastal and Estuarine Land Protection Act, a bill to amend the CZMA to authorize the acquisition of coastal areas in order to better ensure their protection from conversion or development. The bill is cosponsored by Senator Biden, Senator Breaux, Senator Cleland, Senator Cochran, Senator Collins, Senator Corzine, Senator DeWine, Senator Dodd, Senator Feinstein, Senator Inouye, Senator Kennedy, Senator Kerry, Senator Landrieu, Senator Levin, Senator Lieberman, Senator Mikulski, Senator Murray, Senator Nelson, Senator Reed, Senator Sarbanes, Senator Snowe, Senator Torricelli, and Senator Wyden. The bill was referred to the Senate Committee on Commerce, Science, and Transportation.

At its September 26, 2002, executive session, the Committee ordered S. 2608 to be reported favorably with an amendment in the nature of a substitute.

The substitute amendment, offered by Chairman Hollings, makes technical changes to the introduced bill to clarify the grant process and the eligible sources of non-Federal matching funds.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 2608 creates a new program, the legislation would have additional regulatory impact on participating entities. The Coastal and Estuarine Land Protection program would allow the Federal government, through the National Ocean Service of the NOAA, to issue grants through a competitive review process to participating States or NERR units for the purpose of acquiring prop-

erty or interests in property. Voluntary participants to the program would be subject to additional regulatory reporting requirements.

NUMBER OF PERSONS COVERED

The Coastal and Estuarine Land Protection program would allow the Federal government to issue grants through a competitive review process to participating States or NERR units for the purpose of acquiring property, or interests in property, of important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values and are threatened by development or conversion. The program would require a willing seller and purchaser of such interests; therefore, the program would impact only voluntary participants of the program and would not subject any private citizens or businesses not participating in the program to additional regulation.

ECONOMIC IMPACT

The bill would authorize funding for the Coastal and Estuarine Land Protection program at a level of $60 million for fiscal year (FY) 2003 and beyond; and $5 million for the regional watershed demonstration project, to remain available until expended. These authorization levels are intended to improve the performance of the Federal and State entities implementing the CZMA and should have a beneficial impact on the long-term economy of the United States.

PRIVACY

This legislation would not have any adverse impact on the personal privacy of the individuals that will be impacted by this legislation.

PAPERWORK

S. 2608 would not impose any new paperwork requirements on private citizens or businesses that do not choose to participate in Coastal and Estuarine Land Protection program; entities choosing to participate in the program may be subject to some changes in the paperwork requirements of the program.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Act may be cited as the "Coastal and Estuarine Land Protection Act".

Section 2. Findings

This section of the bill recognizes the national importance of coastal and estuarine areas and their functions, the need for permanent protection of these areas in light of intense development pressures, and the role of land acquisition from willing sellers as a cost-effective means to conserve these important areas.

Section 3. Establishment of Program

This section of the bill would add a new subsection 306(b) to the Coastal Zone Management Act and direct the Secretary of Commerce to create a Coastal and Estuarine Land Protection program to protect important coastal and estuarine areas that have signifi-

cant conservation, recreation, ecological, historical, or aesthetic values and that are threatened by conversion.

The section would authorize the Secretary to make grants to coastal States with approved coastal management programs or National Estuarine Research Reserves (NERR) through a competitive awarding process for the purpose of acquiring property or interests in property. At least 15 percent of the funds would be reserved for acquisitions that benefit NERRs. The bill would prohibit any more than 75 percent of the grant funding from being derived from Federal sources. Awards would be based on the demonstrated need for protection, the ability to effectively manage and protect land in perpetuity for conservation purposes, and the ability to leverage the matching share of non-Federal funds. The non-Federal cost share, which may be waived for underserved communities, may include non-monetary or in-kind contributions. The bill additionally specifies that when property is acquired under this program: (1) title will be held by the grant recipient; (2) property will be managed consistently with the purpose of the program; and (3) funds will be returned to the Secretary if the property is sold, exchanged, or divested.

This section of the bill also would authorize the Secretary of Commerce to conduct a regional watershed demonstration project as a model for future efforts that: (1) leverages land acquisition funding from other Federal conservation or acquisition programs; (2) involves partnerships with Federal, State, and non-governmental entities; (3) creates conservation corridors; (4) protects habitats that are under an imminent threat of development or conversion; (5) provides water quality protection for areas under the National Estuarine Research Reserve program; and (6) provides a model for future regional watershed protection projects.

The bill would authorize funding for the Coastal and Estuarine Land Protection program at a level of $60 million for FY 2003 and beyond; and $5 million for the regional watershed demonstration project, to remain available until expended. Up to 5 percent of the funds made available to the Secretary or eligible coastal State may be used for planning or administration.

Section 4. Assistance from Other Agencies

This section of the bill would amend subsection 310(a) of the Coastal Zone Management Act to clarify that the Secretary may enter into contract or other arrangements with other Federal agencies (including interagency financing of Coastal America activities) in conducting the program of technical assistance and management-oriented research necessary to develop and implement State coastal management program amendments and research appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

SEC. 306B. COASTAL AND ESTUARINE LAND PROTECTION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Coastal and Estuarine Land Protection program, in cooperation with appropriate State, regional, and other units of government for the purposes of protecting the environmental integrity of important coastal and estuarine areas, including wetlands and forests, that have significant conservation, recreation, ecological, historical, or aesthetic values, and that are threatened by conversion from their natural, undeveloped, or recreational state to other uses. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

(1) a Coastal Zone Management Plan or Program approved under this title; or

(2) a National Estuarine Research Reserve management plan; or

(3) a regional or state watershed protection plan involving coastal states with approved coastal zone management plans.

(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal states or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the State's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the establishment and implementation of the Coastal and Estuarine Land Protection Act (if different from the coastal zone management program).

(2) Each participating State shall identify priority conservation needs within the State, the values to be protected by inclusion of lands of the program, and the threats to those values that should be avoided.

(3) Each participating State shall evaluate how the acquisition of property or easements might impact working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the program, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) Applications must be determined to be consistent with the State's or territory's approved coastal zone plan, program and policies prior to submittal to the Secretary.

(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological or watershed protection value.

(8) In developing guidelines under this section, the Secretary shall consult with other Federal agencies and non-governmental entities expert in land acquisition and conservation procedures.

(9) Eligible States or National Estaurine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 306A(e) and may acquire lands in cooperation with nongovernmental entities and federal agencies.

(10) The Secretary shall develop performance measures that will allow periodic evaluation of the program's effectiveness in meeting the purposes of this section and such evaluation shall be reported to Congress.

(d) MATCHING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

(2) MAXIMUM FEDERAL SHARE.—

(A) 75 PERCENT FEDERAL FUNDS.—No more than 75 percent of the funding for any grant under this section shall be derived from Federal sources, unless such requirement is specifically waived by the Secretary.

(B) WAIVER OF REQUIREMENT.—The Secretary may grant a waiver of the limitation in subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate.

(3) OTHER FEDERAL FUNDS.—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(4) SOURCE OF MATCHING COST SHARE.—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking onto account the following:

(A) Land value may be used as non-Federal match if the lands are identified in project plans and acquired within three years prior to the submission of the project application or after the submission of a project application until the project grant is closed (not to exceed 3 years). The appraised value of the land at the time of project closing will be considered the non-Federal cost share.

(B) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award. These costs may include either case or in-kind contributions.

(e) REGIONAL WATERSHED DEMONSTRATION PROJECT.—The Secretary may provide up to $5,000,000 for a regional watershed pro-

tection demonstration project that will meet the requirements of this section and:

(1) leverages land acquisition funding from other federal land conservation or acquisition programs such that other Federal contributions, at a minimum, equal the amounts provided by the Secretary;

(2) involves partnerships from a broad spectrum of federal, State, and non-governmental entities;

(3) provides for the creation of conservation corridors and preservation of unique coastal habitat;

(4) protects largely unfragmented habitat under imminent threat of development or conversion;

(5) provides water quality protection for areas set aside for research under the National Estuarine Research Reserve program; and

(6) provides a model for future regional watershed protection projects.

(f) RESERVATION OF FUNDS FOR NATIONAL ESTUARINE RESEARCH RESERVE SITES.—No less than 15 percent of funds made available under this section shall be available for acquisitions benefiting National Estuarine Research Reserve acquisitions.

(g) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2003, fiscal year 2004, fiscal year 2005, and triennially thereafter.

(h) TITLE AND MANAGEMENT OF ACQUIRED PROPERTY.—

(1) IN GENERAL.—If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide such assurances as the Secretary may require that—

(A) the title to the property will be held by the grant recipient or other appropriate public agency designated by the recipient in perpetuity;

(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the correct value will be returned to the Secretary, for re-distribution in the grant process.

(2) CONSERVATION EASEMENT.—In this subsection, the term "conservation easement" includes an easement, recorded deed, or interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this Act except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary—

(1) $60,000,000 for fiscal year 2003 and each fiscal year thereafter to carry out this section (other than subsection (e)); and

(2) $5,000,000 for fiscal year 2003 to carry out subsection (e), such sum to remain available without fiscal year limitation.

SEC. 310. TECHNICAL ASSISTANCE

[16 U.S.C. 1456c]

(a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with [any qualified person for the purposes of carrying out this subsection.] *any other Federal agencies (including interagency financing of Coastal America activities) and any other qualified person for the purposes of carrying out this section.*

(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.

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