

Calendar No. 297

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-158

**COASTAL AND ESTUARINE LAND
PROTECTION ACT**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 861



OCTOBER 1, 2003.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 2003

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAUX, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Staff Director and General Counsel*

ANN BEGEMAN, *Deputy Staff Director*

ROBERT W. CHAMBERLIN, *Chief Counsel*

KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*

GREGG ELIAS, *Democratic General Counsel*

Calendar No. 297

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-158

COASTAL AND ESTUARINE LAND PROTECTION ACT

OCTOBER 1, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 861]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 861) “to authorize the acquisition of interests in undeveloped coastal areas in order better to ensure their protection from development”, having considered the same, reports favorably thereon with an amendment and recommends that the (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 861, the Coastal and Estuarine Land Protection Act, is to authorize a competitive matching grant program in the National Oceanic and Atmospheric Administration (NOAA) to facilitate coastal State acquisition of interests in land from willing sellers of important coastal areas to permanently protect them from conversion or development.

BACKGROUND AND NEEDS

Coastal regions are critical to the economic and environmental health of the United States. The 425 coastal counties generate \$1.3 trillion of the Gross National Product (GNP), and coastal industries account for more than 28 million jobs, over one-third of our national employment. At the same time, coastal estuaries are among the most biologically productive regions in the nation. Estuaries, wetlands, and the watersheds that flow into them support critical life cycle stages of many species of fish and wildlife, and these areas help improve surface water quality by filtering out contaminants. Additionally, coastal areas provide recreational opportunities for more than 180 million Americans each year.

Over sixty percent of all Americans live within 50 miles of the Atlantic and Pacific Oceans, the Gulf of Mexico, and the five Great Lakes. The population density of these areas is four times the national average, and the coastal population is expected to grow by 15 percent during the next two decades. Increasing numbers of people—estimated at more than 3,000 people every day—move to coastal areas, and with this rise in population, there has been a tremendous increase in the competing uses of coastal resources. Many communities do not have the ability to plan for or respond to new pressures on the coastal zone, such as increases in solid waste production, non-point source pollution, losses of green space and wildlife habitat, water quality degradation, and other stresses on coastal and marine environments. Recent studies have concluded that as the amount of impervious surface increases beyond 10 percent, abundance and diversity of aquatic species decline. These pressures of urbanization and pollution along our nation's coasts threaten to cause irreparable damage to fragile coastal ecosystems.

Congress enacted the Coastal Zone Management Act (CZMA) in 1972 in an effort to encourage states to establish coordinated coastal zone management programs and 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. The CZMA provides grants to States that develop and implement Federally approved coastal zone management plans. It also allows States with approved plans the right to review Federal actions to ensure they are consistent with State plans, and it authorizes the National Estuarine Research Reserve (NERR) system. This reserve system, 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.

While there have been great strides in managing much of the nation's coastal zones under the CZMA, many coastal ecosystems remain vulnerable to the pressures of industrialization and development. Further conservation efforts are limited because there is currently no Federal program explicitly setting aside funding for conservation of coastal or estuarine lands, or for coordinating coastal conservation partnerships among the Federal government, State agencies, local governments, private landowners, and non-profit organizations. Such partnership programs that protect coastal lands through purchase from a willing seller of interests in property can be a cost-effective means of providing areas with permanent protection from development, and they are strongly supported by coastal States, which work with private land trusts and others to protect coastal property around the nation.

A number of successful coastal land acquisition partnerships have demonstrated the benefits of such programs. For example, the ACE Basin Project in South Carolina has developed a coordinated protection program covering more than 350,000 acres. The Great Bay Resource Protection Partnership in New Hampshire has permanently protected 3,963 coastal acres, either through purchase or easement. Through the Mobile-Tensaw Watershed Project in Ala-

bama, Federal and State conservation agencies have protected more than 104,000 acres within an area spanning 280,000 acres that is extremely threatened by development. California's 5-county Natural Communities Conservation Plan partnership has resulted in leveraging tens of millions of local, State, and private dollars throughout the region.

Recent reports have highlighted the urgent need for further developing a national land acquisition partnership program. The 2001 National Coastal Condition Report, issued jointly by the Environmental Protection Agency (EPA), NOAA, the Department of Interior, and the Department of Agriculture, found the poorest coastal conditions were associated with coastal wetland loss and eutrophic condition; both are conditions linked to coastal development pressures. The Southern Forest Resource Assessment, issued in 2001 by the U.S. Forest Service, the EPA, and the U.S. Fish and Wildlife Service, 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 of which is slated to occur along the coast. While programs such as the Forest Legacy Program make funds available for forest protection, there is no comparable fund for coastal land needs.

S. 861 would authorize a coastal land acquisition program to address these needs. Specifically, this legislation would authorize the Secretary of Commerce to establish the Coastal and Estuarine Land Program within NOAA to facilitate protection of important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values and are threatened by development or conversion. The legislation would authorize the Secretary of Commerce to award competitive grants to coastal States with approved coastal management programs or to NERRs for the purpose of acquiring sensitive coastal property or interests in such property from willing sellers. Areas eligible for acquisition grants would be allowed to extend landward of the coastal plain into watershed drainage basins and flood plains where the integrity of the ecosystem is inextricably linked to coastal ocean ecosystem health and function.

Proposals eligible for funding would be those that would further the goals of an approved coastal zone management plan, a NERR plan, or a regional or State watershed protection plan involving States with approved coastal zone management plans. The Senate Committee on Commerce, Science, and Transportation (the Committee) expects that proposals that further the goals of plans developed under the National Estuary Program (section 320 of the Federal Water Pollution and Control Act) would fall within these criteria. The legislation would direct coastal States to identify conservation needs and threats to sensitive habitats and to develop proposals that respond to such needs. The Committee encourages States to leverage acquisition funds by coordinating with other federally funded estuary and habitat programs.

Additionally, the legislation would authorize the Secretary of Commerce to conduct a regional watershed demonstration project, which leverages an equal share of land acquisition funding from other Federal contributions, involves a broad spectrum of partners, creates conservation corridors and preserves unique habitats, pro-

TECTS areas under imminent threat, and helps protect the water quality of areas designated as an NERR.

The bill would authorize \$60 million annually for the Coastal and Estuarine Land Program and would require that at least 15 percent of the funds be used for the benefit of NERRs. It further authorizes \$5 million for the regional watershed demonstration project, to remain available until expended.

LEGISLATIVE HISTORY

S. 861 was introduced by Senators Hollings and Gregg, along with 23 co-sponsors, on April 10, 2003, and referred to the Senate Committee on Commerce, Science, and Transportation. On June 19, 2003, the bill was considered by the Committee in an open executive session. The Committee, without objection, ordered S. 861 be reported with an amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 861—Coastal and Estuarine Land Protection Act

Summary: S. 861 would establish a new grant program to be carried out by the National Oceanic and Atmospheric Administration (NOAA). Assuming appropriation of the amount authorized by the bill, CBO estimates that the federal government would spend about \$5 million in fiscal year 2004 and about \$190 million over the 2004–2008 period to implement the legislation. The remaining \$115 million authorized would be spent after 2008. Enacting S. 861 would not affect revenues or direct spending.

This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: S. 861 would authorize the appropriation of \$60 million for each of fiscal years 2004 through 2008 for competitive grants to eligible states. The grants would be used to finance up to 75 percent of the costs of acquiring land in coastal zone management areas or national estuarine research reserves. (These are undeveloped but vulnerable coastal areas that are protected by NOAA and the states under the Coastal Zone Management Act.) In addition, the bill would authorize the appropriation of \$5 million in 2004 for a demonstration project to protect coastal habitat.

The estimated budgetary impact of S. 861 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment). For this estimate, CBO assumes that the full amounts authorized by the bill will be appropriated for each year and that outlays will follow historical spending patterns for other NOAA grant programs.

	By fiscal year in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	65	60	60	60	60
Estimated Outlays	5	25	40	60	60

Intergovernmental and private-sector impact: S. 861 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would authorize grants to states to acquire property to protect certain coastal or estuarine areas. Grantees would be able to allocate a portion of the funds received under the program to qualified local entities to acquire land in cooperation with other organizations. Any costs to state or local governments would be the result of complying with grant conditions.

Estimate prepared by: Federal costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the private sector: Lauren Marks.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

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. 861 would create a new program, the legislation would have additional regulatory impacts on participating entities. The Coastal and Estuarine Land Program would allow the Federal government, through the National Ocean Service of NOAA, to issue grants to participating States or NERR units for the purpose of acquiring property, 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 Program would allow the Federal government to issue grants 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 requires a willing seller and purchaser of such interests; and therefore, the program would impact only voluntary participants 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 Program at a level of \$60 million for fiscal year (FY) 2004 through FY 2008, 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 bodies 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. 861 would not impose any new paperwork requirements on private citizens or businesses that do not choose to participate in the Coastal and Estuarine Land 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 section states the short title is cited as the “Coastal and Estuarine Land Protection Act.”

Section 2. Findings

This section includes a number of Congressional findings, as follows—

- (1) coastal and estuarine areas provide important habitats and ecological functions;
- (2) the Coastal Zone Management Act (CZMA) establishes a Federal-state partnership for protecting natural reserves and managing growth;
- (3) the National Estuarine Research Reserve system relies on the protection of pristine designated areas;
- (4) coastal managers need a range of tools to protect and conserve sensitive areas;
- (5) acquiring coastal property from a willing seller is a cost-effective means of protecting these areas;
- (6) permanent protection of coastal lands is necessary to maintain and enhance coastal and estuarine areas;
- (7) Federal, State, and non-governmental pilot land acquisition projects have contributed to the long-term health and viability of coastal and estuarine systems; and
- (8) enhanced estuarine and coastal protection can be attained through watershed-based acquisition strategies coordinated through Federal, State, regional, and local efforts.

Section 3. Establishment of Coastal and Estuarine Land Protection Program

Subsection (a) would require the Secretary of Commerce to establish a Coastal and Estuarine Land Protection Program for protecting important coastal and estuarine areas that are threatened by development. The program would be administered by the National Ocean Service through the Office of Ocean and Coastal Resource Management.

Subsection (b) would direct the Secretary to make grants to coastal States with approved coastal zone management plans or National Estuarine Research Reserve units for acquiring property or interests in property that will further the goals of those management plans or programs.

Subsection (c) would require the Secretary to allocate funds through a competitive grant process under the following guidelines—

- (1) the Secretary shall consult with the State's coastal zone or estuarine management program;
- (2) each participating State shall identify conservation needs and threats;
- (3) each State shall evaluate any program impacts on working waterfront needs;
- (4) the applicant shall identify the values to be protected and identify how planned management activities will affect the identified values;
- (5) awards shall be based on demonstrated need for protection and ability to successfully leverage other funds;
- (6) applications must be consistent with the approved coastal zone plan, program, and policies;
- (7) priority shall be given to lands that can be effectively managed and that have significant ecological value;
- (8) in developing guidelines, the Secretary shall consult with other groups that are expert in land acquisition and conservation procedures;
- (9) eligible States or NERR units may allocate grants to local governments or agencies and may acquire lands in cooperation with non-governmental entities and Federal agencies; and
- (10) the Secretary shall develop performance measures for periodic evaluation of the program's effectiveness, which shall be reported to Congress.

Subsection (d) would require that Federal funds must be matched by non-Federal funds. The Federal share would be limited to 75 percent, unless specifically waived for underserved communities, communities unable to draw on other sources of funding, or for other reasons the Secretary deems appropriate. Where financial assistance represents only a portion of the total project cost, other Federal funding may be applied to the project, subject to match requirements under applicable law. The non-Federal cost share may be determined by taking into account the land value (if determined 3 years before or after submission), or costs or in-kind contributions associated with land management activities during the period of the grant award.

Subsection (e) would establish a regional watershed demonstration project. Up to \$5,000,000 would be provided for a regional watershed protection demonstration project that—

- (1) leverages equivalent or greater land acquisition funding from other Federal land conservation or acquisition programs;
- (2) involves partnerships from Federal, State, and non-governmental entities;
- (3) creates conservation corridors and preserves unique coastal habitat;
- (4) protects largely unfragmented habitat under imminent threat of development or conversion;
- (5) provides water quality protection for research areas under the National Estuarine Research Reserve program; and
- (6) provides a model for future regional watershed protection projects.

Subsection (f) would provide that at least 15 percent of funds shall be available for acquisitions benefiting National Estuarine Research Reserve acquisitions.

Subsection (g) would provide that no more than 5 percent of the funds shall be used for planning or administration. The Secretary shall submit a report to Congress accounting for expenditures for FY 2004 and FY 2005, and triennially thereafter.

Subsection (h) would provide that if any property is acquired with funds made available through a grant, the State (as the grant recipient) shall assure that (a) it or its designated public agency will hold the title to the property in perpetuity; (b) the property will be managed in a manner consistent with the purposes of this program; and (c) if the property or interest in land is sold, exchanged, or divested, funds will be returned for re-distribution in the grant process. The term “conservation easement” includes an easement, recorded deed, or interest deed accompanied by all property rights, except those that are expressly reserved by a grantor and agreed to at the time of purchase.

Subsection (i) defines the term “coastal State” as being consistent with the definition in section 304 of the Coastal Zone Management Act, and any other term in this Act that is defined in that section of the CZMA would take on the CZMA definition.

Subsection (j) would authorize \$60 million annually for FY 2004 through FY 2008 (except for the watershed demonstration project, for which \$5 million is authorized for FY 2004, to remain available until expended).

Section 4. Assistance from other agencies

This section would amend the CZMA to allow the Secretary to enter into technical assistance program contracts with any Federal agency (including for interagency Coastal America activities), in addition to any other qualified person.

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*):

COASTAL ZONE MANAGEMENT ACT OF 1972

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 car-

rying 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.