

Calendar No. 378

109TH CONGRESS
2^D SESSION

S. 1215

[Report No. 109-224]

To authorize the acquisition of interests in undeveloped coastal areas in order better to ensure their protection from development.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2005

Mr. GREGG (for himself, Ms. MIKULSKI, Mr. SARBANES, Mr. BIDEN, Mr. CORZINE, Ms. SNOWE, Mr. REED, Ms. CANTWELL, Mrs. MURRAY, Mr. COCHRAN, Mr. KERRY, Mr. INOUE, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. COLLINS, Mr. KENNEDY, Mr. DEWINE, Mr. LIEBERMAN, Mr. CHAFEE, Mr. WARNER, Mr. SESSIONS, Mr. WYDEN, Mr. DEMINT, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 27, 2006

Reported by Mr. STEVENS, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize the acquisition of interests in undeveloped coastal areas in order better to ensure their protection from development.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Coastal and Estuarine
3 Land Protection Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Coastal and estuarine areas provide impor-
7 tant nursery habitat for two-thirds of the nation’s
8 commercial fish and shellfish; provide nesting and
9 foraging habitat for coastal birds; harbor significant
10 natural plant communities; and serve to facilitate
11 coastal flood control and pollutant filtration.

12 (2) The Coastal Zone Management Act of 1972
13 (16 U.S.C. 1451 et seq.) recognizes the national im-
14 portance of these areas and their ecological vulner-
15 ability to anthropogenic activities by establishing a
16 comprehensive Federal-State partnership for pro-
17 tecting natural reserves and managing growth in
18 these areas.

19 (3) The National Estuarine Research Reserve
20 system established under that Act relies on the pro-
21 tection of pristine designated areas for long-term
22 protection and for the conduct of education and re-
23 search critical to the protection and conservation of
24 coastal and estuarine resources.

25 (4) Intense development pressures within the
26 coastal zone are driving the need to provide coastal

1 managers with a wider range of tools to protect and
2 conserve important coastal and estuarine areas.

3 (5) Protection of undeveloped coastal lands
4 through the acquisition of interests in property from
5 a willing seller are a cost-effective means of pro-
6 viding these areas with permanent protection from
7 development.

8 (6) Permanent protection of lands in the coast-
9 al zone is a necessary component of any program to
10 maintain and enhance coastal and estuarine areas
11 for the benefit of the Nation, including protection of
12 water quality, access to public beachfront, con-
13 serving wildlife habitat, and sustaining sport and
14 commercial fisheries.

15 (7) Federal-State-nongovernmental organization
16 pilot land acquisition projects have already substan-
17 tially contributed to the long-term health and viabil-
18 ity of coastal and estuarine systems.

19 (8) Enhanced protection of estuarine and coast-
20 al areas can be attained through watershed-based
21 acquisition strategies coordinated through Federal,
22 State, regional, and local efforts.

1 **SEC. 3. ESTABLISHMENT OF COASTAL AND ESTUARINE**
2 **LAND PROTECTION PROGRAM.**

3 (a) **IN GENERAL.**—The Secretary of Commerce shall
4 establish a Coastal and Estuarine Land Protection Pro-
5 gram, in cooperation with appropriate State, regional, and
6 other units of government for the purposes of protecting
7 the environmental integrity of important coastal and estu-
8 arine areas, including wetlands and forests, that have sig-
9 nificant conservation, recreation, ecological, historical, or
10 aesthetic values, and that are threatened by conversion
11 from their natural, undeveloped, or recreational state to
12 other uses. The program shall be administered by the Na-
13 tional Ocean Service of the National Oceanic and Atmos-
14 pheric Administration through the Office of Ocean and
15 Coastal Resource Management.

16 (b) **PROPERTY ACQUISITION GRANTS.**—The Sec-
17 retary shall make grants under the program to coastal
18 States, except coastal States that have lost less than 1
19 percent of their wetlands to development or conversion to
20 other land uses by the date of enactment of this Act, with
21 approved coastal zone management plans or National Es-
22 tuarine Research Reserve units for the purpose of acquir-
23 ing property or interests in property described in sub-
24 section (a) that will further the goals of—

1 (1) a Coastal Zone Management Plan or Pro-
2 gram approved under the Coastal Zone Management
3 Act of 1972 (16 U.S.C. 1451 et seq.); or

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

6 (3) a regional or State watershed protection
7 plan involving coastal States with approved coastal
8 zone management plans.

9 (c) GRANT PROCESS.—The Secretary shall allocate
10 funds to coastal States or National Estuarine Research
11 Reserves under this section through a competitive grant
12 process in accordance with guidelines that meet the fol-
13 lowing requirements:

14 (1) The Secretary shall consult with the State's
15 coastal zone management program, any National Es-
16 tuarine Research Reserve in that State, and the lead
17 agency designated by the Governor for coordinating
18 the establishment and implementation of this Act (if
19 different from the coastal zone management pro-
20 gram).

21 (2) Each participating State shall identify pri-
22 ority conservation needs within the State, the values
23 to be protected by inclusion of lands of the program,
24 and the threats to those values that should be avoid-
25 ed.

1 (3) Each participating State shall evaluate how
2 the acquisition of property or easements might im-
3 pact working waterfront needs.

4 (4) The applicant shall identify the values to be
5 protected by inclusion of the lands in the program,
6 management activities that are planned and the
7 manner in which they may affect the values identi-
8 fied, and any other information from the landowner
9 relevant to administration and management of the
10 land.

11 (5) Awards shall be based on demonstrated
12 need for protection and ability to successfully lever-
13 age funds among participating entities, including
14 Federal programs, regional organizations, State and
15 other governmental units, landowners, corporations,
16 or private organizations.

17 (6) Applications must be determined to be con-
18 sistent with the State's or territory's approved coast-
19 al zone plan, program and policies prior to submittal
20 to the Secretary.

21 (7) Priority shall be given to lands described in
22 subsection (a) that can be effectively managed and
23 protected and that have significant ecological or wa-
24 tershed protection value.

1 (8) In developing guidelines under this section;
2 the Secretary shall consult with other Federal agen-
3 cies and non-governmental entities expert in land ac-
4 quisition and conservation procedures.

5 (9) Eligible States or National Estuarine Re-
6 search Reserves may allocate grants to local govern-
7 ments or agencies eligible for assistance under sec-
8 tion 306A(e) of the Coastal Zone Management Act
9 of 1972 (16 U.S.C. 1455a) and may acquire lands
10 in cooperation with nongovernmental entities and
11 Federal agencies.

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

17 (d) MATCHING REQUIREMENTS.—

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

22 (2) MAXIMUM FEDERAL SHARE.—

23 (A) 75 PERCENT FEDERAL FUNDS.—No
24 more than 75 percent of the funding for any
25 grant under this section shall be derived from

1 Federal sources, unless such requirement is
2 specifically waived by the Secretary.

3 (B) WAIVER OF REQUIREMENT.—The Sec-
4 retary may grant a waiver of the limitation in
5 subparagraph (A) for underserved communities,
6 communities that have an inability to draw on
7 other sources of funding because of the small
8 population or low income of the community, or
9 for other reasons the Secretary deems appro-
10 priate.

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

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

22 (A) Land value may be used as non-Fed-
23 eral match if the lands are identified in project
24 plans and acquired within three years prior to
25 the submission of the project application or

1 after the submission of a project application
2 until the project grant is closed (not to exceed
3 3 years). The appraised value of the land at the
4 time of project closing will be considered the
5 non-Federal cost share.

6 (B) Costs associated with land acquisition,
7 land management planning, remediation, res-
8 toration, and enhancement may be used as non-
9 Federal match if the activities are identified in
10 the plan and expenses are incurred within the
11 period of the grant award. These costs may in-
12 clude either cash or in-kind contributions.

13 (c) REGIONAL WATERSHED DEMONSTRATION
14 PROJECT.—The Secretary may provide up to \$5,000,000
15 for a regional watershed protection demonstration project
16 that will meet the requirements of this section, and—

17 (1) leverages land acquisition funding from
18 other Federal land conservation or acquisition pro-
19 grams such that other Federal contributions, at a
20 minimum, equal the amounts provided by the Sec-
21 retary;

22 (2) involves partnerships from a broad spec-
23 trum of Federal, State, and non-governmental enti-
24 ties;

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

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

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

8 (6) provides a model for future regional water-
9 shed protection projects.

10 (f) RESERVATION OF FUNDS FOR NATIONAL ESTUA-
11 RINE RESEARCH RESERVE SITES.—No less than 15 per-
12 cent of funds made available under this section shall be
13 available for acquisitions benefiting National Estuarine
14 Research Reserve acquisitions.

15 (g) LIMIT ON ADMINISTRATIVE COSTS.—No more
16 than 5 percent of the funds made available to the Sec-
17 retary under this section shall be used by the Secretary
18 for planning or administration of the program. The Sec-
19 retary shall provide a report to Congress with an account
20 of all expenditures under this section for fiscal year 2006,
21 fiscal year 2007, and triennially thereafter.

22 (h) TITLE AND MANAGEMENT OF ACQUIRED PROP-
23 erty.—

24 (1) IN GENERAL.—If any property is acquired
25 in whole or in part with funds made available

1 through a grant under this section, the grant recipi-
2 ent shall provide such assurances as the Secretary
3 may require that—

4 (A) the title to the property will be held by
5 the grant recipient or other appropriate public
6 agency designated by the recipient in per-
7 petuity;

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

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

17 (2) CONSERVATION EASEMENT.—In this sub-
18 section, the term “conservation easement” includes
19 an easement, recorded deed, or interest deed where
20 the grantee acquires all rights, title, and interest in
21 a property, that do not conflict with the goals of this
22 Act except those rights, title, and interests that may
23 run with the land that are expressly reserved by a
24 grantor and are agreed to at the time of purchase.

1 (i) DEFINITIONS.—In this section, the term “coastal
 2 State” has the meaning given that term by section 304(4)
 3 of the Coastal Zone Management Act of 1972 (16 U.S.C.
 4 1453(4)), and any other term used in this section that
 5 is defined in section 304 of that Act has the meaning given
 6 that term in that section.

7 (j) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to the Secretary—

9 (1) such sums as may be necessary for each of
 10 fiscal years 2006 through 2009 to carry out this sec-
 11 tion (other than subsection (e)); and

12 (2) \$5,000,000 for fiscal year 2006 to carry out
 13 subsection (e), such sum to remain available without
 14 fiscal year limitation.

15 **SEC. 4. ASSISTANCE FROM OTHER AGENCIES.**

16 Section 310(a) of the Coastal Zone Management Act
 17 of 1972 (16 U.S.C. 1456e(a)) is amended by striking “any
 18 qualified person for the purposes of carrying out this sub-
 19 section.” and inserting “any other Federal agencies (in-
 20 cluding interagency financing of Coastal America activi-
 21 ties) and any other qualified person for the purposes of
 22 carrying out this section.”.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Coastal and Estuarine*
 25 *Land Protection Act”.*

1 **SEC. 2. FINDINGS.**

2 *Congress finds the following:*

3 *(1) Coastal and estuarine areas provide impor-*
4 *tant nursery habitat for two-thirds of the nation's*
5 *commercial fish and shellfish, provide nesting and*
6 *foraging habitat for coastal birds, harbor significant*
7 *natural plant communities, and serve to facilitate*
8 *coastal flood control and pollutant filtration.*

9 *(2) The Coastal Zone Management Act of 1972*
10 *(16 U.S.C. 1451 et seq.) recognizes the national im-*
11 *portance of these areas and their ecological vulner-*
12 *ability to anthropogenic activities by establishing a*
13 *comprehensive Federal-State partnership for pro-*
14 *tecting natural reserves and managing growth in*
15 *these areas.*

16 *(3) The National Estuarine Research Reserve*
17 *system established under that Act relies on the protec-*
18 *tion of pristine designated areas for long-term protec-*
19 *tion and for the conduct of education and research*
20 *critical to the protection and conservation of coastal*
21 *and estuarine resources.*

22 *(4) Intense development pressures within the*
23 *coastal watershed are driving the need to provide*
24 *coastal managers with a wider range of tools to pro-*
25 *tect and conserve important coastal and estuarine*
26 *areas.*

1 (5) *Protection of undeveloped coastal lands*
2 *through the acquisition of interests in property from*
3 *a willing seller are a cost-effective means of providing*
4 *these areas with permanent protection from develop-*
5 *ment.*

6 (6) *Permanent protection of lands in the coastal*
7 *zone is a necessary component of any program to*
8 *maintain and enhance coastal and estuarine areas for*
9 *the benefit of the Nation, including protection of*
10 *water quality, access to public beachfront, conserving*
11 *wildlife habitat, and sustaining sport and commercial*
12 *fisheries.*

13 (7) *Federal-State-nongovernmental organization*
14 *pilot land acquisition projects have already substan-*
15 *tially contributed to the long-term health and viabil-*
16 *ity of coastal and estuarine systems.*

17 (8) *Enhanced protection of estuarine and coastal*
18 *areas can be attained through watershed-based acqui-*
19 *sition strategies coordinated through Federal, State,*
20 *regional, and local efforts.*

21 (9) *Conserving coastal and estuarine landscapes*
22 *can support the traditional economic and natural re-*
23 *source bases of communities in the coastal watershed,*
24 *including well-managed forests that demonstrate out-*

1 (1) *a Coastal Zone Management Plan or Pro-*
2 *gram approved under the Coastal Zone Management*
3 *Act of 1972 (16 U.S.C. 1451 et seq.); or*

4 (2) *a National Estuarine Research Reserve man-*
5 *agement plan; or*

6 (3) *a regional or State watershed protection plan*
7 *involving coastal States with approved coastal zone*
8 *management plans.*

9 (c) *GRANT PROCESS.—The Secretary shall allocate*
10 *funds to coastal States or National Estuarine Research Re-*
11 *serves under this section through a competitive grant proc-*
12 *ess in accordance with guidelines that meet the following*
13 *requirements:*

14 (1) *The Secretary shall consult with the State's*
15 *coastal zone management program, any National Es-*
16 *tuarine Research Reserve in that State, and the lead*
17 *agency designated by the Governor for coordinating*
18 *the implementation of this Act (if different from the*
19 *coastal zone management program).*

20 (2) *Each participating State shall identify pri-*
21 *ority conservation needs within the State, the values*
22 *to be protected by inclusion of lands of the program,*
23 *and the threats to those values that should be avoided.*

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

4 (4) *The applicant shall identify the values to be*
5 *protected by inclusion of the lands in the program,*
6 *management activities that are planned and the man-*
7 *ner in which they may affect the values identified,*
8 *and any other information from the landowner rel-*
9 *evant to administration and management of the land.*

10 (5) *Awards shall be based on demonstrated need*
11 *for protection and ability to successfully leverage*
12 *funds among participating entities, including Federal*
13 *programs, regional organizations, State and other*
14 *governmental units, landowners, corporations, or pri-*
15 *vate organizations.*

16 (6) *The governor, or the lead agency designated*
17 *by the governor for coordinating the implementation*
18 *of this Act, shall determine that the application is*
19 *consistent with the State's or territory's approved*
20 *coastal zone plan, program and policies prior to sub-*
21 *mittal to the Secretary.*

22 (7) *Priority shall be given to lands described in*
23 *subsection (a) that can be effectively managed and*
24 *protected and that have significant ecological or wa-*
25 *tershed protection value.*

1 (8) *In developing guidelines under this section,*
2 *the Secretary shall consult with other Federal agen-*
3 *cies and non-governmental entities with expertise in*
4 *land acquisition and conservation procedures.*

5 (9) *Eligible States or National Estuarine Re-*
6 *search Reserves may allocate grants to local govern-*
7 *ments or agencies eligible for assistance under section*
8 *306A(e) of the Coastal Zone Management Act of 1972*
9 *(16 U.S.C. 1455a) and may acquire lands in coopera-*
10 *tion with nongovernmental entities and Federal agen-*
11 *cies.*

12 (10) *The Secretary shall develop measures that*
13 *will ensure that property or interests in property ac-*
14 *quired in whole or in part through the use of funds*
15 *under the program are acquired only from willing*
16 *sellers.*

17 (11) *The Secretary shall develop performance*
18 *measures that will allow periodic evaluation and re-*
19 *porting of the program's effectiveness in accom-*
20 *plishing its purposes.*

21 *(d) MATCHING REQUIREMENTS.—*

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

1 (2) *MAXIMUM FEDERAL SHARE.*—

2 (A) *75 PERCENT FEDERAL FUNDS.*—No
3 more than 75 percent of the funding for any
4 project under this section shall be derived from
5 Federal sources, unless such requirement is spe-
6 cifically waived by the Secretary.

7 (B) *WAIVER OF REQUIREMENT.*—The Sec-
8 retary may grant a waiver of the limitation in
9 subparagraph (A) for underserved communities,
10 communities that have an inability to draw on
11 other sources of funding because of the small pop-
12 ulation or low income of the community, or for
13 other reasons the Secretary deems appropriate.

14 (3) *OTHER FEDERAL FUNDS.*—Where financial
15 assistance awarded under this section represents only
16 a portion of the total cost of a project, funding from
17 other Federal sources may be applied to the cost of the
18 project. Each portion shall be subject to match re-
19 quirements under the applicable provision of law.

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

24 (A) *Land value may be used as non-Federal*
25 *match if the lands are identified in project plans*

1 *and acquired within three years prior to the sub-*
2 *mission of the project application or after the*
3 *submission of a project application until the*
4 *project grant is closed (not to exceed 3 years).*
5 *The appraised value of the land at the time of*
6 *project closing will be considered the non-Federal*
7 *cost share. The value of land that is held by a*
8 *nongovernmental organization may be used for*
9 *such purpose if it is held in perpetuity by a*
10 *qualified conservation organization, as deter-*
11 *mined by the Secretary.*

12 *(B) Costs associated with land acquisition,*
13 *land management planning, remediation, res-*
14 *toration, and enhancement may be used as non-*
15 *Federal match if the activities are identified in*
16 *the plan and expenses are incurred within the*
17 *period of the grant award. These costs may in-*
18 *clude either cash or in-kind contributions.*

19 *(e) REGIONAL WATERSHED DEMONSTRATION*
20 *PROJECT.—The Secretary may provide up to \$5,000,000*
21 *for a regional watershed protection demonstration project*
22 *that—*

23 *(1) leverages land acquisition funding from other*
24 *Federal land conservation or acquisition programs*

1 *such that other Federal contributions, at a minimum,*
2 *equal the amounts provided by the Secretary;*

3 *(2) involves funding from and participation by*
4 *multiple Federal, State, and non-governmental enti-*
5 *ties;*

6 *(3) provides for the creation of conservation cor-*
7 *ridors and preservation of unique coastal habitat;*

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

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

13 *(6) provides a model for future regional water-*
14 *shed protection projects.*

15 *(f) RESERVATION OF FUNDS FOR NATIONAL ESTUA-*
16 *RINE RESEARCH RESERVE SITES.—No less than 15 percent*
17 *of funds made available under this section shall be available*
18 *for acquisitions benefiting National Estuarine Research Re-*
19 *serve acquisitions.*

20 *(g) LIMIT ON ADMINISTRATIVE COSTS.—No more than*
21 *5 percent of the funds made available to the Secretary under*
22 *this section shall be used by the Secretary for planning or*
23 *administration of the program. The Secretary shall provide*
24 *a report to Congress with an account of all expenditures*

1 *under this section for fiscal year 2007 and triennially there-*
2 *after.*

3 (h) *TITLE AND MANAGEMENT OF ACQUIRED PROP-*
4 *ERTY.—*

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

10 (A) *the title to the property will be held by*
11 *the grant recipient or another appropriate public*
12 *agency designated by the recipient in perpetuity;*

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

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

21 (2) *CONSERVATION EASEMENT.—In this sub-*
22 *section, the term “conservation easement” includes an*
23 *easement, recorded deed, or interest deed where the*
24 *grantee acquires all rights, title, and interest in a*
25 *property, that do not conflict with the goals of this*

1 *Act except those rights, title, and interests that may*
2 *run with the land that are expressly reserved by a*
3 *grantor and are agreed to at the time of purchase.*

4 *(i) DEFINITIONS.—In this section, the term “coastal*
5 *State” has the meaning given that term by section 304(4)*
6 *of the Coastal Zone Management Act of 1972 (16 U.S.C.*
7 *1453(4)), and any other term used in this section that is*
8 *defined in section 304 of that Act has the meaning given*
9 *that term in that section.*

10 *(j) AUTHORIZATION OF APPROPRIATIONS.—There are*
11 *authorized to be appropriated to the Secretary—*

12 *(1) \$60,000,000 for each of fiscal years 2007*
13 *through 2010 to carry out this section (other than*
14 *subsection (e)); and*

15 *(2) \$5,000,000 for fiscal year 2007 to carry out*
16 *subsection (e), such sum to remain available without*
17 *fiscal year limitation.*

Calendar No. 378

109TH CONGRESS
2^D SESSION

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[Report No. 109-224]

A BILL

To authorize the acquisition of interests in undeveloped coastal areas in order better to ensure their protection from development.

MARCH 27, 2006

Reported with an amendment in the nature of a substitute