108TH CONGRESS 2D SESSION

## S. 2105

To improve the Federal shore protection program.

## IN THE SENATE OF THE UNITED STATES

February 24, 2004

Mr. Lautenberg (for himself and Mr. Corzine) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

## A BILL

To improve the Federal shore protection program.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Coastal Restoration
- 5 Act of 2004".
- 6 SEC. 2. FEDERAL AID IN RESTORATION AND PROTECTION
- 7 OF SHORES AND BEACHES.
- 8 The first section of the Act entitled "An Act author-
- 9 izing Federal participation in the cost of protecting the
- 10 shores of publicly owned property", approved August 13,
- 11 1946 (33 U.S.C. 426e), is amended to read as follows:

| 1  | "SECTION 1. FEDERAL AID IN RESTORATION AND PROTEC-   |
|----|--|
| 2  | TION OF SHORES AND BEACHES.                          |
| 3  | "(a) Declaration of Policy.—                         |
| 4  | "(1) Policy.—It is the policy of the United          |
| 5  | States to promote shore and beach protection         |
| 6  | projects and related research that encourages the    |
| 7  | protection, restoration, and enhancement of shores,  |
| 8  | sandy beaches, and other coastal infrastructure on a |
| 9  | comprehensive and coordinated basis by Federal,      |
| 10 | State, and local governments and private persons.    |
| 11 | "(2) Purposes.—The purposes of this Act              |
| 12 | are—   |
| 13 | "(A) to restore and maintain the shores,             |
| 14 | beaches, and other coastal resources of the          |
| 15 | United States (including territories and posses-     |
| 16 | sions); and  |
| 17 | "(B) to promote the healthful recreation of          |
| 18 | the people of the United States.                     |
| 19 | "(3) Priority.—In carrying out this Act, pref-       |
| 20 | erence shall be given to areas—                      |
| 21 | "(A) in which there has been a previous in-          |
| 22 | vestment of Federal funds;                           |
| 23 | "(B) where regional sediment management              |
| 24 | plans have been adopted;                             |
| 25 | "(C) with respect to which the need for              |
| 26 | prevention or mitigation of damage to shores.        |

| 1  | beaches, and other coastal infrastructure is at-            |
|----|---|
| 2  | tributable to Federal navigation projects or                |
| 3  | other Federal activities; or                                |
| 4  | "(D) that promote—  |
| 5  | "(i) human health and safety; and                           |
| 6  | "(ii) the quality of life for individuals                   |
| 7  | and families.   |
| 8  | "(b) Implementation.—The Secretary shall pay the            |
| 9  | Federal share of the cost of carrying out shore and beach   |
| 10 | protection projects and related research that encourages    |
| 11 | the protection, restoration, and enhancement of shores,     |
| 12 | sandy beaches, and other coastal infrastructure (including  |
| 13 | projects for beach restoration, periodic beach nourishment, |
| 14 | and restoration or protection of State, county, or other    |
| 15 | shores, public coastal beaches, parks, conservation areas,  |
| 16 | or other environmental resources).                          |
| 17 | "(c) Federal Share.—  |
| 18 | "(1) In general.—Subject to paragraphs (2)                  |
| 19 | through (4), the Federal share of the cost of a             |
| 20 | project described in subsection (b) shall be deter-         |
| 21 | mined in accordance with section 103 of the Water           |
| 22 | Resources Development Act of 1986 (33 U.S.C.                |
| 23 | 2213).  |
| 24 | "(2) Exception.—In the case of a project for                |
| 25 | beach erosion control the primary purpose of which          |

| 1  | is recreation, the Federal share shall be equal to the |
|----|--|
| 2  | Federal share for a beach erosion control project the  |
| 3  | primary purpose of which is storm damage protec-       |
| 4  | tion or environmental restoration.                     |
| 5  | "(3) Remainder.—                                       |
| 6  | "(A) In General.—Subject to subpara-                   |
| 7  | graph (B), the remainder of the cost of the con-       |
| 8  | struction of a project described in subsection         |
| 9  | (b) shall be paid by a State, municipality, other      |
| 10 | political subdivision, nonprofit entity, or private    |
| 11 | enterprise.  |
| 12 | "(B) Exception.—The Federal Govern-                    |
| 13 | ment shall bear all of the costs incurred for the      |
| 14 | restoration and protection of Federal property.        |
| 15 | "(4) Greater federal share.—In the case                |
| 16 | of a project described in subsection (b) for the res-  |
| 17 | toration and protection of a State, county, or other   |
| 18 | publicly-owned shore, coastal beach, park, conserva-   |
| 19 | tion area, or other environmental resource, the Chief  |
| 20 | of Engineers may increase the Federal share to be      |
| 21 | greater than that provided in paragraph (1) if the     |
| 22 | area—  |
| 23 | "(A) includes—   |
| 24 | "(i) a zone that excludes permanent                    |
| 25 | human habitation; or                                   |

| 1  | "(ii) a recreational beach or other              |
|----|--|
| 2  | area determined by the Chief of Engineers;       |
| 3  | "(B) satisfies adequate criteria for con-        |
| 4  | servation and development of the natural re-     |
| 5  | sources of the environment; and                  |
| 6  | "(C) extends landward a sufficient distance      |
| 7  | to include, as approved by the Chief of Engi-    |
| 8  | neers—   |
| 9  | "(i) protective dunes, bluffs, or other          |
| 10 | natural features;                                |
| 11 | "(ii) such other appropriate measures            |
| 12 | adopted by the State or political subdivi-       |
| 13 | sion of the State to protect uplands areas       |
| 14 | from damage, promote public recreation, or       |
| 15 | protect environmental resources; or              |
| 16 | "(iii) appropriate facilities for public         |
| 17 | use.   |
| 18 | "(5) Recommendations.—                           |
| 19 | "(A) In general.—In recommending to              |
| 20 | Congress projects for Federal participation, the |
| 21 | Secretary shall recommend projects for the res-  |
| 22 | toration and protection of shores and beaches    |
| 23 | that promote equally all national economic de-   |
| 24 | velopment benefits and purposes, including       |

| 1  | recreation, hurricane and storm damage reduc-                   |
|----|---|
| 2  | tion, and environmental restoration.                            |
| 3  | "(B) Report.—The Secretary shall—                               |
| 4  | "(i) identify projects that maximize                            |
| 5  | net benefits for national purposes; and                         |
| 6  | "(ii) submit to Congress a report that                          |
| 7  | describes the findings of the Secretary.                        |
| 8  | "(d) Periodic Beach Nourishment.—In this Act,                   |
| 9  | when the most suitable and economical remedial measures,        |
| 10 | as determined by the Chief of Engineers, would be pro-          |
| 11 | vided by periodic beach nourishment, the term 'construc-        |
| 12 | tion' shall include the deposit of sand fill at suitable inter- |
| 13 | vals of time to furnish sand supply to protect shores and       |
| 14 | beaches for a period of time specified by the Chief of Engi-    |
| 15 | neers and authorized by Congress.                               |
| 16 | "(e) Private Shores and Beaches.—                               |
| 17 | "(1) In General.—A shore or beach, other                        |
| 18 | than a public shore or beach, shall be eligible for             |
| 19 | Federal assistance under this Act if—                           |
| 20 | "(A) there is a benefit to a public shore or                    |
| 21 | beach, including a benefit from public use or                   |
| 22 | from the protection of nearby public property;                  |
| 23 | or  |
| 24 | "(B) the benefits to the shore or beach are                     |
| 25 | incidental to the project.                                      |

| 1  | "(2) Federal Share.—The Secretary shall               |
|----|---|
| 2  | adjust the Federal share of a project for a shore or  |
| 3  | beach, other than a public shore or beach, to reflect |
| 4  | the benefits described in paragraph (1).              |
| 5  | "(f) Authorization of Projects.—                      |
| 6  | "(1) In General.—Subject to paragraph (2),            |
| 7  | no Federal share shall be provided for a project      |
| 8  | under this Act unless—                                |
| 9  | "(A) the plan for that project has been               |
| 10 | specifically adopted and authorized by Congress       |
| 11 | after investigation and study; or                     |
| 12 | "(B) in the case of a small project under             |
| 13 | sections 3 or 5, the plan for that project has        |
| 14 | been approved by the Chief of Engineers.              |
| 15 | "(2) Studies.—  |
| 16 | "(A) IN GENERAL.—The Secretary shall—                 |
| 17 | "(i) recommend to Congress studies                    |
| 18 | concerning shore and beach protection                 |
| 19 | projects that meet the criteria established           |
| 20 | under this Act and other applicable law;              |
| 21 | "(ii) conduct such studies as Congress                |
| 22 | requests; and   |
| 23 | "(iii) report the results of all studies              |
| 24 | requested by Congress to the Committee                |
| 25 | on Environment and Public Works of the                |

| 1  | Senate and the Committee on Transpor-        |
|----|--|
| 2  | tation and Infrastructure of the House of    |
| 3  | Representatives.                             |
| 4  | "(B) Recommendations for shore and           |
| 5  | BEACH PROTECTION PROJECTS.—                  |
| 6  | "(i) In General.—The Secretary               |
| 7  | shall—                                       |
| 8  | "(I) recommend to Congress the               |
| 9  | authorization or reauthorization of all      |
| 10 | shore and beach protection projects          |
| 11 | the plans for which have been ap-            |
| 12 | proved by the Chief of Engineers; and        |
| 13 | "(II) report to Congress on the              |
| 14 | feasibility of other projects that have      |
| 15 | been studied under subparagraph (A)          |
| 16 | but have not been approved by the            |
| 17 | Chief of Engineers.                          |
| 18 | "(ii) Considerations.—In approving           |
| 19 | a project plan, the Chief of Engineers shall |
| 20 | consider the economic and ecological bene-   |
| 21 | fits of the shore or beach protection        |
| 22 | project.                                     |
| 23 | "(C) COORDINATION OF PROJECTS.—In            |
| 24 | conducting studies and making recommenda-    |

| 1  | tions for a shore or beach protection project   |
|----|---|
| 2  | under this paragraph, the Secretary shall—      |
| 3  | "(i) determine whether there is any             |
| 4  | other project being carried out by the Sec-     |
| 5  | retary or other Federal agency that may be      |
| 6  | complementary to the shore or beach pro-        |
| 7  | tection project; and                            |
| 8  | "(ii) if there is such a complementary          |
| 9  | project, undertake efforts to coordinate the    |
| 10 | projects.                                       |
| 11 | "(3) SHORE AND BEACH PROTECTION                 |
| 12 | PROJECTS.—                                      |
| 13 | "(A) IN GENERAL.—The Secretary shall            |
| 14 | construct any shore or beach protection project |
| 15 | authorized by Congress, or separable element of |
| 16 | such a project, for which Congress has appro-   |
| 17 | priated funds.                                  |
| 18 | "(B) AGREEMENTS.—                               |
| 19 | "(i) Requirement.—After authoriza-              |
| 20 | tion by Congress, before the commence-          |
| 21 | ment of construction of a shore or beach        |
| 22 | protection project or separable element, the    |
| 23 | Secretary shall offer to enter into a written   |
| 24 | agreement for the authorized period of          |
| 25 | Federal participation in the project with a     |

| 1  | non-Federal interest with respect to the                    |
|----|---|
| 2  | project or separable element.                               |
| 3  | "(ii) Terms.—The agreement shall—                           |
| 4  | "(I) specify the authorized period                          |
| 5  | of Federal participation in the project;                    |
| 6  | and   |
| 7  | "(II) ensure that the Federal                               |
| 8  | Government and the non-Federal in-                          |
| 9  | terest cooperate in carrying out the                        |
| 10 | project or separable element.                               |
| 11 | "(g) Extension of the Period of Federal Par-                |
| 12 | TICIPATION.—At the request of a non-Federal interest,       |
| 13 | the Secretary, acting through the Chief of Engineers and    |
| 14 | with the approval of Congress, shall extend the period of   |
| 15 | Federal participation in a beach nourishment project that   |
| 16 | is economically feasible, engineeringly sound, and environ- |
| 17 | mentally acceptable for such additional period as the Sec-  |
| 18 | retary determines appropriate.                              |
| 19 | "(h) Special Considerations.—In a case in which             |
| 20 | funds have been appropriated to the Corps of Engineers      |
| 21 | for a specific project but the funds cannot be expended     |
| 22 | because of the time limits of environmental permits or      |
| 23 | similar environmental considerations, the Secretary may     |
| 24 | carry over such funds for use in the next fiscal year if    |
| 25 | construction of the project, or a separable element of the  |

- 1 project, will cause minimal environmental damage and will
- 2 not violate an environmental permit.".

 $\bigcirc$