

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 368

To authorize the acquisition of land and interests in land from willing sellers to improve the conservation of, and to enhance the ecological values and functions of, coastal and estuarine areas to benefit both the environment and the economies of coastal communities, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Mrs. CAPPS (for herself, Mr. FARR, and Ms. BORDALLO) introduced the following bill; which was referred to the Committee on Natural Resources

---

## A BILL

To authorize the acquisition of land and interests in land from willing sellers to improve the conservation of, and to enhance the ecological values and functions of, coastal and estuarine areas to benefit both the environment and the economies of coastal communities, and for other purposes.

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 and Estuarine  
5 Land Conservation Program Act”.

1 **SEC. 2. AUTHORIZATION OF COASTAL AND ESTUARINE**  
2 **LAND CONSERVATION PROGRAM.**

3 The Coastal Zone Management Act of 1972 (16  
4 U.S.C. 1451 et seq.) is amended by inserting after section  
5 307 the following new section:

6 “AUTHORIZATION OF THE COASTAL AND ESTUARINE  
7 LAND CONSERVATION PROGRAM

8 “SEC. 307A. (a) IN GENERAL.—The Secretary may  
9 conduct a Coastal and Estuarine Land Conservation Pro-  
10 gram, in cooperation with appropriate State, regional, and  
11 other units of government, for the purposes of protecting  
12 important coastal and estuarine areas that have signifi-  
13 cant conservation, recreation, ecological, historical, or aes-  
14 thetic values, or that are threatened by conversion from  
15 their natural, undeveloped, or recreational state to other  
16 uses or could be managed or restored to effectively con-  
17 serve, enhance, or restore ecological function. The pro-  
18 gram shall be administered by the National Ocean Service  
19 of the National Oceanic and Atmospheric Administration  
20 through the Office of Ocean and Coastal Resource Man-  
21 agement.

22 “(b) PROPERTY ACQUISITION GRANTS.—The Sec-  
23 retary shall make grants under the program to coastal  
24 states with approved coastal zone management plans or  
25 National Estuarine Research Reserve units for the pur-

1 pose of acquiring property or interests in property de-  
2 scribed in subsection (a) that will further the goals of—

3 “(1) a Coastal Zone Management Plan or Pro-  
4 gram approved under this title;

5 “(2) a National Estuarine Research Reserve  
6 management plan;

7 “(3) a regional or State watershed protection or  
8 management plan involving coastal states with ap-  
9 proved coastal zone management programs; or

10 “(4) a State coastal land acquisition plan that  
11 is consistent with an approved coastal zone manage-  
12 ment program.

13 “(c) GRANT PROCESS.—The Secretary shall allocate  
14 funds to coastal states or National Estuarine Research  
15 Reserves under this section through a competitive grant  
16 process in accordance with guidelines that meet the fol-  
17 lowing requirements:

18 “(1) The Secretary shall consult with the coast-  
19 al state’s coastal zone management program, any  
20 National Estuarine Research Reserve in that State,  
21 and the lead agency designated by the Governor for  
22 coordinating the implementation of this section (if  
23 different from the coastal zone management pro-  
24 gram).

1           “(2) Each participating coastal state, after con-  
2           sultation with local governmental entities and other  
3           interested stakeholders, shall identify priority con-  
4           servation needs within the State, the values to be  
5           protected by inclusion of lands in the program, and  
6           the threats to those values that should be avoided.

7           “(3) Each participating coastal state shall to  
8           the extent practicable ensure that the acquisition of  
9           property or easements shall complement working wa-  
10          terfront needs.

11          “(4) The applicant shall identify the values to  
12          be protected by inclusion of the lands in the pro-  
13          gram, management activities that are planned and  
14          the manner in which they may affect the values  
15          identified, and any other information from the land-  
16          owner relevant to administration and management of  
17          the land.

18          “(5) Awards shall be based on demonstrated  
19          need for protection and ability to successfully lever-  
20          age funds among participating entities, including  
21          Federal programs, regional organizations, State and  
22          other governmental units, landowners, corporations,  
23          or private organizations.

24          “(6) The governor, or the lead agency des-  
25          ignated by the governor for coordinating the imple-

1       mentation of this section, where appropriate in con-  
2       sultation with the appropriate local government,  
3       shall determine that the application is consistent  
4       with the State’s or territory’s approved coastal zone  
5       plan, program, and policies prior to submittal to the  
6       Secretary.

7               “(7)(A) Priority shall be given to lands de-  
8       scribed in subsection (a) that can be effectively man-  
9       aged and protected and that have significant ecologi-  
10      cal value.

11              “(B) Of the projects that meet the standard in  
12      subparagraph (A), priority shall be given to lands  
13      that—

14              “(i) are under an imminent threat of con-  
15      version to a use that will degrade or otherwise  
16      diminish their natural, undeveloped, or rec-  
17      reational state; and

18              “(ii) serve to mitigate the adverse impacts  
19      caused by coastal population growth in the  
20      coastal environment.

21              “(8) In developing guidelines under this section,  
22      the Secretary shall consult with coastal states, other  
23      Federal agencies, and other interested stakeholders  
24      with expertise in land acquisition and conservation  
25      procedures.

1           “(9) Eligible coastal states or National Estua-  
2           rine Research Reserves may allocate grants to local  
3           governments or agencies eligible for assistance under  
4           section 306A(e).

5           “(10) The Secretary shall develop performance  
6           measures that the Secretary shall use to evaluate  
7           and report on the program’s effectiveness in accom-  
8           plishing its purposes, and shall submit such evalua-  
9           tions to Congress triennially.

10          “(d) LIMITATIONS AND PRIVATE PROPERTY PROTEC-  
11          TIONS.—

12           “(1) A grant awarded under this section may  
13           be used to purchase land or an interest in land, in-  
14           cluding an easement, only from a willing seller. Any  
15           such purchase shall not be the result of a forced tak-  
16           ing under this section. Nothing in this section re-  
17           quires a private property owner to participate in the  
18           program under this section.

19           “(2) Any interest in land, including any ease-  
20           ment, acquired with a grant under this section shall  
21           not be considered to create any new liability, or have  
22           any effect on liability under any other law, of any  
23           private property owner with respect to any person  
24           injured on the private property.

1           “(3) Nothing in this section requires a private  
2           property owner to provide access (including Federal,  
3           State, or local government access) to or use of pri-  
4           vate property unless such property or an interest in  
5           such property (including a conservation easement)  
6           has been purchased with funds made available under  
7           this section.

8           “(e) RECOGNITION OF AUTHORITY TO CONTROL  
9           LAND USE.—Nothing in this title modifies the authority  
10          of Federal, State, or local governments to regulate land  
11          use.

12          “(f) MATCHING REQUIREMENTS.—

13                 “(1) IN GENERAL.—The Secretary may not  
14                 make a grant under the program unless the Federal  
15                 funds are matched by non-Federal funds in accord-  
16                 ance with this subsection.

17                 “(2) COST SHARE REQUIREMENT.—

18                         “(A) IN GENERAL.—Grant funds under  
19                         the program shall require a 100 percent match  
20                         from other non-Federal sources.

21                         “(B) WAIVER OF REQUIREMENT.—The  
22                         Secretary may grant a waiver of subparagraph  
23                         (A) for underserved communities, communities  
24                         that have an inability to draw on other sources  
25                         of funding because of the small population or

1 low income of the community, or for other rea-  
2 sons the Secretary deems appropriate and con-  
3 sistent with the purposes of the program.

4 “(3) OTHER FEDERAL FUNDS.—Where finan-  
5 cial assistance awarded under this section represents  
6 only a portion of the total cost of a project, funding  
7 from other Federal sources may be applied to the  
8 cost of the project. Each portion shall be subject to  
9 match requirements under the applicable provision  
10 of law.

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

15 “(A) The value of land or a conservation  
16 easement may be used by a project applicant as  
17 non-Federal match, if the Secretary determines  
18 that—

19 “(i) the land meets the criteria set  
20 forth in section 2(b) and is acquired in the  
21 period beginning 3 years before the date of  
22 the submission of the grant application  
23 and ending 3 years after the date of the  
24 award of the grant;



1           “(ii) the value of the land or easement  
2           is held by a non-governmental organization  
3           included in the grant application in per-  
4           petuity for conservation purposes of the  
5           program; and

6           “(iii) the land or easement is con-  
7           nected either physically or through a con-  
8           servation planning process to the land or  
9           easement that would be acquired.

10          “(B) The appraised value of the land or  
11          conservation easement at the time of the grant  
12          closing will be considered and applied as the  
13          non-Federal cost share.

14          “(C) Costs associated with land acquisi-  
15          tion, land management planning, remediation,  
16          restoration, and enhancement may be used as  
17          non-Federal match if the activities are identi-  
18          fied in the plan and expenses are incurred with-  
19          in the period of the grant award, or, for lands  
20          described in (A), within the same time limits  
21          described therein. These costs may include ei-  
22          ther cash or in-kind contributions.

23          “(g) RESERVATION OF FUNDS FOR NATIONAL ESTU-  
24          ARINE RESEARCH RESERVE SITES.—No less than 15 per-  
25          cent of funds made available under this section shall be

1 available for acquisitions benefitting National Estuarine  
2 Research Reserves.

3       “(h) LIMIT ON ADMINISTRATIVE COSTS.—No more  
4 than 5 percent of the funds made available to the Sec-  
5 retary under this section shall be used by the Secretary  
6 for planning or administration of the program. The Sec-  
7 retary shall provide a report to Congress with an account  
8 of all expenditures under this section for fiscal year 2009  
9 and triennially thereafter.

10       “(i) TITLE AND MANAGEMENT OF ACQUIRED PROP-  
11 erty.—If any property is acquired in whole or in part  
12 with funds made available through a grant under this sec-  
13 tion, the grant recipient shall provide—

14               “(1) such assurances as the Secretary may re-  
15       quire that—

16                       “(A) the title to the property will be held  
17                       by the grant recipient or another appropriate  
18                       public agency designated by the recipient in  
19                       perpetuity;

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

1           “(C) if the property or interest in land is  
2           sold, exchanged, or divested, funds equal to the  
3           current value will be returned to the Secretary  
4           in accordance with applicable Federal law for  
5           redistribution in the grant process; and

6           “(2) certification that the property (including  
7           any interest in land) will be acquired from a willing  
8           seller.

9           “(j) REQUIREMENT FOR PROPERTY USED FOR NON-  
10          FEDERAL MATCH.—If the grant recipient elects to use  
11          any land or interest in land held by a non-governmental  
12          organization as a non-Federal match under subsection (g),  
13          the grant recipient must to the Secretary’s satisfaction  
14          demonstrate in the grant application that such land or in-  
15          terest will satisfy the same requirements as the lands or  
16          interests in lands acquired under the program.

17          “(k) DEFINITIONS.—In this section:

18                 “(1) CONSERVATION EASEMENT.—The term  
19                 ‘conservation easement’ includes an easement or re-  
20                 striction, recorded deed, or a reserve interest deed  
21                 where the grantee acquires all rights, title, and in-  
22                 terest in a property, that do not conflict with the  
23                 goals of this section except those rights, title, and  
24                 interests that may run with the land that are ex-

1       pressly reserved by a grantor and are agreed to at  
2       the time of purchase.

3               “(2) INTEREST IN PROPERTY.—The term ‘in-  
4       terest in property’ includes a conservation easement.

5               “(1) AUTHORIZATION OF APPROPRIATIONS.—There  
6       are authorized to be appropriated to the Secretary to carry  
7       out this section \$60,000,000 for each of fiscal years 2009  
8       through 2013.”.

○