I

117TH CONGRESS
1ST SESSION

H. R. 3160

To amend the Coastal Zone Management Act of 1972 to establish a Working Waterfront Task Force and a working waterfronts grant program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2021

Ms. PINGREE (for herself, Mr. WITTMAN, Mr. HUFFMAN, Mr. KILMER, Mrs. LURIA, Mr. CARBAJAL, Mr. PALLONE, and Mr. KEATING) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Coastal Zone Management Act of 1972 to establish a Working Waterfront Task Force and a working waterfronts grant program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Keep America's Waterfronts Working Act''.

SEC. 2. WORKING WATERFRONTS GRANT PROGRAM.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by adding at the end the following:

"SEC. 320. WORKING WATERFRONTS GRANT PROGRAM.

"(a) WORKING WATERFRONT TASK FORCE.—

"(1) ESTABLISHMENT AND FUNCTIONS.—The Secretary of Commerce shall establish a task force to work directly with coastal States, user groups, and coastal stakeholders to identify and address critical needs with respect to working waterfronts.

"(2) MEMBERSHIP.—The members of the task force shall be appointed by the Secretary of Commerce, and shall include—

"(A) experts in the unique economic, social, cultural, ecological, geographic, and resource concerns of working waterfronts; and

"(B) representatives from the National Oceanic and Atmospheric Administration's Office of Coastal Management, the United States Fish and Wildlife Service, the Department of Agriculture, the Environmental Protection Agency, the United States Geological Survey, the Navy, the National Marine Fisheries Service, the Economic Development Agency, and such other Federal agencies as the Secretary considers appropriate.

"(3) FUNCTIONS.—The task force shall—

"(A) identify and prioritize critical needs with respect to working waterfronts in States that have a management program approved by the Secretary of Commerce pursuant to section 306, in the areas of—

"(i) economic and cultural importance of working waterfronts to communities;

"(ii) changing environments and threats working waterfronts face from environment changes, trade barriers, sea level rise, extreme weather events, ocean acidification, and harmful algal blooms; and

"(iii) identifying working waterfronts and highlighting them within communities;

"(B) outline options, in coordination with coastal States and local stakeholders, to address such critical needs, including adaptation and mitigation where applicable;

"(C) identify Federal agencies that are responsible under existing law for addressing such critical needs; and

"(D) recommend Federal agencies best suited to address any critical needs for which no agency is responsible under existing law.

"(4) INFORMATION TO BE CONSIDERED.—In identifying and prioritizing policy gaps pursuant to paragraph (3), the task force shall consider the findings and recommendations contained in section VI of the report entitled 'The Sustainable Working Waterfronts Toolkit: Final Report', dated March 2013.

"(5) REPORT.—Not later than 18 months after the date of the enactment of this section, the task force shall submit a report to Congress on its findings.

"(6) IMPLEMENTATION.—The head of each Federal agency identified in the report pursuant to paragraph (3)(C) shall take such action as is necessary to implement the recommendations contained in the report by not later than 1 year after the date of the issuance of the report.

"(b) WORKING WATERFRONT GRANT PROGRAM.—

"(1) The Secretary shall establish a Working Waterfront Grant Program, in cooperation with appropriate State, regional, and other units of government, under which the Secretary may make a grant to any coastal State for the purpose of implementing a working waterfront plan approved by the Secretary under subsection (c).

"(2) Subject to the availability of appropriations, the Secretary shall award matching grants under the Working Waterfronts Grant Program to coastal States with approved working waterfront plans through a regionally equitable, competitive funding process in accordance with the following:

"(A) The Governor, or the lead agency designated by the Governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that the application is consistent with the State's or territory's approved coastal zone plan, program, and policies prior to submission to the Secretary.

"(B) In developing guidelines under this section, the Secretary shall consult with coastal States, other Federal agencies, and other interested stakeholders with expertise in working waterfront planning.

"(C) Coastal States may allocate grants to local governments, Indian Tribes, agencies, or nongovernmental organizations eligible for assistance under this section.

"(3) In awarding a grant to a coastal State, the Secretary shall consider—

"(A) the economic, cultural, and historical significance of working waterfront to the coastal State;

“(B) the demonstrated working waterfront needs of the coastal State as outlined by a working waterfront plan approved for the coastal State under subsection (c), and the value of the proposed project for the implementation of such plan;

“(C) the ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other government units, landowners, corporations, or private organizations;

“(D) the potential for rapid turnover in the ownership of working waterfront in the coastal State, and where applicable the need for coastal States to respond quickly when properties in existing or potential working waterfront areas or public access areas as identified in the working waterfront plan submitted by the coastal State come under threat or become available; and

“(E) the impact of the working waterfront plan approved for the coastal State under subsection (c) on the coastal ecosystem and the users of the coastal ecosystem.

"(4) The Secretary shall approve or reject an application for such a grant within 60 days after receiving an application for the grant.

"(c) WORKING WATERFRONT PLANS.—

"(1) To be eligible for a grant under subsection (b), a coastal State must submit and have approved by the Secretary a comprehensive working waterfront plan in accordance with this subsection, or be in the process of developing such a plan and have an established working waterfront program at the State or local level, or the Secretary determines that an existing coastal land use plan for that State is in accordance with this subsection.

"(2) Such plan—

"(A) must provide for preservation and expansion of access to coastal waters to persons engaged in commercial fishing, recreational fishing and boating businesses, aquaculture, boatbuilding, or other water-dependent, coastal-related business;

"(B) shall include one or more of—

"(i) an assessment of the economic, social, cultural, and historic value of working waterfront to the coastal State;

"(ii) a description of relevant State and local laws and regulations affecting working waterfront in the geographic areas identified in the working waterfront plan;

"(iii) identification of geographic areas where working waterfronts are currently under threat of conversion to uses incompatible with commercial and recreational fishing, recreational fishing and boating businesses, aquaculture, boatbuilding, or other water-dependent, coastal-related business, and the level of that threat;

"(iv) identification of geographic areas with a historic connection to working waterfronts where working waterfronts are not currently available, and, where appropriate, an assessment of the environmental impacts of any expansion or new development of working waterfronts on the coastal ecosystem;

"(v) identification of other working waterfront needs including improvements to existing working waterfronts and working waterfront areas;

"(vi) a strategic and prioritized plan for the preservation, expansion, and improvement of working waterfronts in the coastal State;

"(vii) for areas identified under clauses (iii), (iv), (v), and (vi), identification of current availability and potential for expansion of public access to coastal waters;

"(viii) a description of the degree of community support for such strategic plan; and

"(ix) a contingency plan for properties that revert to the coastal State pursuant to determinations made by the coastal State under subsection (g)(4)(C);

"(C) may include detailed environmental impacts on working waterfronts, including hazards, sea level rise, inundation exposure, and other resiliency issues;

"(D) may be part of the management program approved under section 306;

"(E) shall utilize to the maximum extent practicable existing information contained in relevant surveys, plans, or other strategies to fulfill the information requirements under this paragraph; and

"(F) shall incorporate the policies and regulations adopted by communities under local working waterfront plans or strategies in existence before the date of the enactment of this section.

"(3) A working waterfront plan—

"(A) shall be effective for purposes of this section for the 5-year period beginning on the date it is approved by the Secretary;

"(B) must be updated and re-approved by the Secretary before the end of such period; and

"(C) shall be complimentary to and incorporate the policies and objectives of regional or local working waterfront plans as in effect before the date of enactment of this section or as subsequently revised.

"(4) The Secretary may—

"(A) award planning grants to coastal States for the purpose of developing or revising comprehensive working waterfront plans; and

"(B) award grants consistent with the purposes of this section to States undertaking the working waterfront planning process under this section, for the purpose of preserving and protecting working waterfronts during such process.

"(5) Any coastal State applying for a working waterfront grant under this title shall—

"(A) develop a working waterfront plan, using a process that involves the public and those with an interest in the coastal zone;

"(B) coordinate development and implementation of such a plan with other coastal management programs, regulations, and activities of the coastal State; and

"(C) if the coastal State allows qualified holders (other than the coastal State) to enter into working waterfront covenants, provide as part of the working waterfront plan under this subsection a mechanism or procedure to ensure that the qualified holders are complying their duties to enforce the working waterfront covenant.

"(d) USES, TERMS, AND CONDITIONS.—

"(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

"(2) A grant under this section may be used—

"(A) to acquire a working waterfront, or an interest in a working waterfront;

"(B) to make improvements to a working waterfront, including the construction or repair of wharfs, boat ramps, or related facilities; or

"(C) for necessary climate adaptation mitigation.

"(e) PUBLIC ACCESS REQUIREMENT.—A working waterfront project funded by grants made under this section must provide for expansion, improvement, or preservation of reasonable and appropriate public access to coastal waters at or in the vicinity of a working waterfront, except for commercial fishing or other industrial access points where the coastal State determines that public access would be unsafe.

"(f) LIMITATIONS.—

"(1) Except as provided in paragraph (2), a grant awarded under this section may be used to purchase working waterfront or an interest in working waterfront, including an easement, only from a willing seller and at fair market value.

"(2) A grant awarded under this section may be used to acquire working waterfront or an interest in working waterfront at less than fair market value only if the owner certifies to the Secretary that the sale is being entered into willingly and without coercion.

"(3) No Federal, State, or local entity may exercise the power of eminent domain to secure title to any property or facilities in connection with a project carried out under this section.

"(g) ALLOCATION OF GRANTS TO LOCAL GOVERNMENTS AND OTHER ENTITIES.—

"(1) The Secretary shall encourage coastal States to broadly allocate amounts received as grants under this section among working waterfronts identified in working waterfront plans approved under subsection (c).

"(2) Subject to the approval of the Secretary, a coastal State may, as part of an approved working waterfront plan, designate as a qualified holder any unit of State or local government or nongovernmental organization, if the coastal State is ultimately responsible for ensuring that the property will be managed in a manner that is consistent with the purposes for which the land entered into the program.

"(3) A coastal State or a qualified holder designated by a coastal State may allocate to a unit of local government, nongovernmental organization, fishing cooperative, or other entity, a portion of any grant made under this section for the purpose of carrying out this section, except that such an allocation shall not relieve the coastal State of the responsibility for ensuring that any funds so allocated are applied in furtherance of the coastal State's approved working waterfront plan.

''(4) A qualified holder may hold title to or interest in property acquired under this section, except that—

''(A) all persons holding title to or interest in working waterfront affected by a grant under this section, including a qualified holder, private citizen, private business, nonprofit organization, fishing cooperative, or other entity, shall enter into a working waterfront covenant;

''(B) such covenant shall be held by the coastal State or a qualified holder designated under paragraph (2);

''(C) if the coastal State determines, on the record after an opportunity for a hearing, that the working waterfront covenant has been violated—

''(i) all right, title, and interest in and to the working waterfront covered by such covenant shall, except as provided in subparagraph (D), revert to the coastal State; and

''(ii) the coastal State shall have the right of immediate entry onto the working waterfront;

''(D) if a coastal State makes a determination under subparagraph (C), the coastal State may convey or authorize the qualified holder to convey the working waterfront or interest in working waterfront to another qualified holder; and

''(E) nothing in this subsection waives any legal requirement under any Federal or State law.

''(h) MATCHING CONTRIBUTIONS.—

''(1) Except as provided in paragraph (2), the Secretary shall require that each coastal State that receives a grant under this section, or a qualified holder designated by that coastal State under subsection (g), shall provide matching funds in an amount equal to at least 25 percent of the total cost of the project carried out with the grant.

"(2) The Secretary may waive the application of paragraph (1) for any qualified holder that is an underserved community, a community that has 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 considers appropriate.

"(3) A local community designated as a qualified holder under subsection (g) may utilize funds or other in-kind contributions donated by a nongovernmental partner to satisfy the matching funds requirement under this subsection.

"(4) As a condition of receipt of a grant under this section, the Secretary shall require that a coastal State provide to the Secretary such assurances as the Secretary determines are sufficient to demonstrate that the share of the cost of each eligible project that is not funded by the grant awarded under this section has been secured.

"(5) If financial assistance 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.

"(6) The Secretary shall treat as non-Federal match the value of a working waterfront or interest in a working waterfront, including conservation and other easements, that is held in perpetuity by a qualified holder, if the working waterfront or interest is identified in the application for the grant and acquired by the qualified holder within 3 years of the grant award date, or within 3 years after the submission of the application and before the end of the grant award period. Such value shall be determined by an appraisal performed at such time before the award of the grant as the Secretary considers appropriate.

"(7) The Secretary shall treat as non-Federal match the costs associated with acquisition of a working waterfront or an interest in a working waterfront, and the costs of restoration, enhancement, or other improvement to a working waterfront, if the activities are identified in the project application and the costs are incurred within the period of the grant award, or, for working waterfront described in paragraph (6), within the same time limits described in that paragraph. These costs may include either cash or in-kind contributions.

"(i) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section may be used by the Secretary for planning or administration of the program under this section.

"(j) OTHER TECHNICAL AND FINANCIAL ASSISTANCE.—

"(1) Up to 5 percent of the funds appropriated under this section may be used by the Secretary for purposes of providing technical assistance as described in this subsection.

"(2) The Secretary shall—

"(A) provide technical assistance to coastal States and local governments in identifying and obtaining other sources of available Federal technical and financial assistance for the development and revision of a working waterfront plan and the implementation of an approved working waterfront plan;

"(B) provide technical assistance to States and local governments for the development, implementation, and revision of comprehensive working waterfront plans, which may include, subject to the availability of appropriations, planning grants and assistance, pilot projects, feasibility studies, research, and other projects necessary to further the purposes of this section;

“(C) assist States in developing other tools to protect working waterfronts;

“(D) collect and disseminate to States guidance for best storm water management practices in regards to working waterfronts;

“(E) provide technical assistance to States and local governments on integrating resilience planning into working waterfront preservation efforts; and

“(F) collect and disseminate best practices on working waterfronts and resilience planning.

“(k) REPORTS.—

“(1) The Secretary shall—

“(A) develop performance measures to evaluate and report on the effectiveness of the program under this section in accomplishing the purpose of this section; and

“(B) submit to Congress a biennial report that includes such evaluations, an account of all expenditures, and descriptions of all projects carried out using grants awarded under this section.

"(2) The Secretary may submit the biennial report under paragraph (1)(B) by including it in the biennial report required under section 316.

"(l) DEFINITIONS.—In this section:

"(1) The term 'qualified holder' means a coastal State or a unit of local or coastal State government or a non-State organization designated by a coastal State under subsection (g).

"(2) The term 'Secretary' means the Secretary, acting through the National Oceanic and Atmospheric Administration.

"(3) The term 'working waterfront' means real property (including support structures over water and other facilities) that provides access to coastal waters to persons engaged in commercial and recreational fishing, recreational fishing and boating businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business and is used for, or that supports, commercial and recreational fishing, recreational fishing and boating businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business.

"(4) The term 'working waterfront covenant' means an agreement in recordable form between the owner of working waterfront and one or more qualified holders, that provides such assurances as the Secretary may require that—

"(A) the title to or interest in the working waterfront will be held by a grant recipient or qualified holder in perpetuity, except as provided in subparagraph (C);

"(B) the working waterfront will be managed in a manner that is consistent with the purposes for which the property is acquired pursuant to this section, and the property will not be converted to any use that is inconsistent with the purpose of this section;

"(C) if the title to or interest in the working waterfront is sold or otherwise exchanged—

"(i) all working waterfront owners and qualified holders involved in such sale or exchange shall accede to such agreement; and

"(ii) funds equal to the fair market value of the working waterfront or interest in working waterfront shall be paid to the Secretary by parties to the sale or exchange, and such funds shall, at the discretion of the Secretary, be paid to the coastal State in which the working waterfront is located for use in the implementation of the working waterfront plan of the State approved by the Secretary under this section; and

''(D) such covenant is subject to enforcement and oversight by the coastal State or by another person as determined appropriate by the Secretary.

''(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Grant Program $15,000,000.''.

SEC. 3. WORKING WATERFRONTS PRESERVATION FUND; GRANTS.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is further amended by adding at the end the following:

''SEC. 321. WORKING WATERFRONTS PRESERVATION LOAN FUND.

''(a) FUND.—There is established in the Treasury a separate account that shall be known as the 'Working Waterfronts Preservation Loan Fund' (in this section referred to as the 'Fund').

''(b) USE.—

''(1) Subject to the availability of appropriations, amounts in the Fund may be used by the Secretary to make loans to coastal States for the purpose of implementing a working waterfront plan approved by the Secretary under section 320(c) through preservation, improvement, restoration, rehabilitation, acquisition of working waterfront properties under criteria established by the Secretary.

"(2) Upon enactment of this section, the Secretary of Commerce shall conduct a feasibility study on the administration of the development and management of a Working Waterfronts Preservation Loan Fund.

"(3) Upon the completion of the study under paragraph (2), the Secretary shall establish a fund in accordance with the results of that study, and establish such criteria as referenced in subsection (c) in consultation with States that have a management program approved by the Secretary of Commerce pursuant to section 306 and local government coastal management programs.

"(c) AWARD CRITERIA.—The Secretary shall award loans under this section through a regionally equitable, competitive funding process, and in accordance with the following:

"(1) The Governor, or the lead agency designated by the Governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that an application for a loan is consistent with the State's approved coastal zone plan, program, and policies prior to submission to the Secretary.

"(2) In developing guidelines under this section, the Secretary shall consult with coastal States, other Federal agencies, and other interested stakeholders with expertise in working waterfront planning.

"(3) Coastal States may allocate amounts loaned under this section to local governments, Indian Tribes, agencies, or nongovernmental organizations eligible for loans under this section.

"(4) In awarding a loan for activities in a coastal State, the Secretary shall consider—

"(A) the economic and cultural significance of working waterfront to the coastal State;

"(B) the demonstrated working waterfront needs of the coastal State as outlined by a working waterfront plan approved for the coastal State under section 320(c), and the value of the proposed loan for the implementation of such plan;

"(C) the ability to successfully leverage loan funds among participating entities, including Federal programs, regional organizations, State and other government units, landowners, corporations, or private organizations;

"(D) the potential for rapid turnover in the ownership of working waterfront in the coastal State, and where applicable the need for coastal States to respond quickly when properties in existing or potential working waterfront areas or public access areas as identified in the working waterfront plan submitted by the coastal State come under threat or become available;

"(E) the impact of the loan on the coastal ecosystem and the users of the coastal ecosystem; and

"(F) the extent of the historic connection between working waterfronts for which the loan will be used and the local communities within the coastal State.

"(d) LOAN AMOUNT AND TERMS.—

"(1) The amount of a loan under this section—

"(A) shall be not less than $100,000; and

"(B) shall not exceed 15 percent of the amount in the Fund as of July 1 of the fiscal year in which the loan is made.

"(2) The interest rate for a loan under this section shall not exceed 4 percent.

"(3) The repayment term for a loan under this section shall not exceed 20 years.

"(e) DEADLINE FOR APPROVAL.—The Secretary shall approve or reject an application for a loan under this section within 60 days after receiving an application for the loan.

"(f) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section may be used by the Secretary for planning or administration of the program under this section.

"(g) DEFINITIONS.—The definitions in section 320(l) shall apply to this section.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund $15,000,000.".

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