

Subcommittee on Indian, Insular, and Alaska Native Affairs

Don Young, Chairman

Hearing Memorandum

November 2, 2015

To: Subcommittee on Indian, Insular and Alaska Native Affairs Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: Legislative hearing on H.R. 2719 (Rep. Derek Kilmer), To amend the Coastal Zone Management Act of 1972 to authorize grants to Indian tribes to further achievement of tribal coastal zone objectives, and for other purposes.
Wednesday, November 4, 2015, at 2:00 p.m. in 1324 LHOB.

H.R. 2719 (Rep. Derek Kilmer), “*Tribal Coastal Resiliency Act*”

Summary of the bill

H.R. 2719 was introduced by Rep. Derek Kilmer (D-WA-6) on June 10, 2015. The bill would amend the Coastal Zone Management Act of 1972¹ to add language which would allow tribes to apply and receive competitive grants to preserve, redevelop, restore, protect deteriorating waterfronts or shorelines.

H.R. 2719 is also referred to the Subcommittee on Energy and Mineral Resources, which has not held a hearing on this bill.

Cosponsors

Rep. Benishek, Dan (MI-1), Rep. Cole, Tom (OK-4) Rep. DelBene, Suzan K. (WA-1), Rep. Dingell, Debbie (MI-12), Rep. Gallego, Ruben (AZ-7), Rep. Grijalva, Raul M. (AZ-3), Rep. Hastings, Alcee L. (FL-20), Rep. Heck, Denny (WA-10), Rep. Huffman, Jared (CA-2), Rep. Lujan, Ben Ray (NM-3), Rep. McCollum, Betty (MN-4), Rep. Moore, Gwen (WI-4), Rep. Murphy, Patrick (FL-18), Rep. Pingree, Chellie (ME-1), Rep. Pocan, Mark (WI-2) Rep. Polis, Jared (CO-2), Rep. Ruiz, Raul (CA-36), Rep. Slaughter, Louise McIntosh (NY-25), Rep. Torres, Norma (CA-35), and Rep. Young, Don (AK)

Witnesses

The Honorable Penny Pritzker, Secretary [Invited but declined to testify]
U.S. Department of Commerce
Washington, D.C.

¹ 16 U.S.C. 1451 et seq.

The Honorable Fawn Sharp, President
Quinault Indian Nation
Taholah, WA

Background

In 1972, Congress enacted the Coastal Zone Management Act (“CZMA”). The CZMA is administered by the National Oceanic and Atmospheric Administration (“NOAA”) within the Department of Commerce. NOAA’s goal is to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.”²

The CZMA outlines three national programs: the National Coastal Zone Management Program, the National Estuarine Research Reserve System, and the Coastal and Estuarine Land Conservation Program (“CELCP”). The stated purpose of the National Coastal Zone Management Program is to balance competing land and water issues through state and territorial coastal management programs; the Reserve System serves as field laboratories that provide a greater understanding of estuaries and how humans impact them; the CELCP provides matching funds to state and local governments to purchase threatened coastal and estuarine lands or obtain conservation easements.³

The CZMA does not explicitly authorize grants to federally recognized Indian tribes and Alaska Natives. H.R. 2719 would amend the CZMA to authorize the Secretary award \$5 million in each fiscal year to qualified federally recognized tribes and Alaska Native Corporations to aide them in tribal coastal zone objectives. Such objectives are described in H.R. 2719 as including: (1) protection, restoration, or preservation of areas in the tribal coastal zone that hold important ecological, cultural, or sacred significance for such tribe; or traditional, historic, and esthetic values essential to such tribe (2) preparing and implementing a special area management plan and technical planning for important coastal areas; (3) any coastal or shoreline stabilization measure, including any mitigation measure, for the purpose of public safety, public access, or cultural or historical preservation.

Major Provisions/Analysis of H.R. 2719

Section 2. Grants to further achievement of tribal coastal zone objectives. Subsection (b) adds a new section (Section 320) to the end of the Coastal Zone Management Act of 1972 to authorize the Secretary of Commerce to award grants to qualified tribes. A tribe is defined as including a federally recognized Indian tribe, Alaska Native Village, and Alaska Native Village or Regional Corporation.

Section 320 of the CZMA, as added by section 2, also sets forth the federal cost share for an activity undertaken by a tribe to achieve its coastal zone objective: the federal cost share would be 100 percent for a federal grant under \$200,000, and 95 percent for a grant in excess of \$200,000. The Secretary may waive the reduced federal cost share based on a tribe’s ability to fund its share.

² Coastal Zone Management Act. <<http://coast.noaa.gov/czm/act/>>

³ Id.

Cost

Unknown. The bill authorizes \$5 million, subject to appropriations, each fiscal year for tribes for coastal resiliency grants established under this bill.

Administration Position.

Unknown.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by HR 2719

(new text highlighted in yellow; text to be deleted in brackets and highlighted in blue)

The Coastal Zone Management Act of 1972 (16 USC 1451 et seq.)

SEC. 306A (16 USC 1455a)

§1455a. Coastal resource improvement program.

(a) Definitions. For purposes of this section-

(1) The term "eligible coastal state" means a coastal state that for any fiscal year for which a grant is applied for under this section-

(A) has a management program approved under [section 1455 of this title](#); and

(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 1452(2)(A) through (K) of this title.

(2) The term "urban waterfront and port" means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) Resource management improvement grants. The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by [section 1455\(d\)\(9\) of this title](#) because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts.

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated in the state's management program pursuant to [section 1455\(d\)\(2\)\(C\) of this title](#) as areas of particular concern.

(3) The provision of access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under [section 1455\(d\)\(2\)\(G\) of this title](#).

(4) The development of a coordinated process among State agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

(c) Uses, terms and conditions of grants

(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) Grants made under this section may be used for-

(A) the acquisition of fee simple and other interests in land;

(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum of any grant made under this section may be used for such construction projects;

(C) in the case of grants made for objectives described in subsection (b)(2) of this section-

(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,

(ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and

(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas, but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; [and]

(E) educational, interpretive, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section[.] ; and

(F) fulfilling any tribal coastal zone objective (as that term is defined in section 320.

(d) State matching contributions; ratio; maximum amount of grants.

(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988.

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) Allocation of grants to local governments and other agencies. With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 3334 of title 42, a regional agency, or an interstate agency, 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 that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) Other technical and financial assistance. In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

At end of law:

SEC. 320. GRANTS TO FURTHER ACHIEVEMENT OF TRIBAL COASTAL ZONE OBJECTIVES.

(a) GRANTS AUTHORIZED.—The Secretary may award competitive grants to qualified Indian tribes to further achievement of the objectives of such a tribe for its tribal coastal zone.

(b) COST SHARE.—

(1) IN GENERAL.—The Federal share of the cost of any activity carried out with a grant under this section shall be—

(A) in the case of a grant of less than \$200,000, 100 percent of such cost; and

(B) in the case of a grant of \$200,000 or more, 95 percent of such cost, except as provided in paragraph (2).

(2) WAIVER.—The Secretary may waive the application of paragraph (1)(B) with respect to a grant to an Indian tribe, or otherwise reduce the portion of the share of the cost of an activity required to be paid by an Indian tribe under such paragraph, if the Secretary determines that the tribe does not have sufficient funds to pay such portion.

(c) COMPATIBILITY.—The Secretary may not award a grant under this section unless the Secretary determines, in consultation with affected coastal States, that the activities to be carried out with the grant are compatible with this title.

(d) AUTHORIZED OBJECTIVES AND PURPOSES.—Amounts awarded as a grant under this section shall be used for one or more of the objectives and purposes authorized under subsections (b) and (c), respectively, of section 306A.

(e) FUNDING.—To carry out this section there is authorized to be appropriated \$5,000,000 for each fiscal year.

(f) DEFINITIONS.—In this section:

(1) QUALIFIED INDIAN TRIBE.—The term ‘qualified Indian tribe’ means an Indian tribe, as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450b](#)), that is located in a State that has a management program approved by the Secretary under this title.

(2) TRIBAL COASTAL ZONE.—The term ‘tribal coastal zone’ means any area excluded from the coastal zone under the last sentence of section 304(1) because such area is held in trust for the benefit of an Indian tribe.

(3) TRIBAL COASTAL ZONE OBJECTIVE.—The term ‘tribal coastal zone objective’ means, with respect to a qualified Indian tribe, any of the following objectives:

(A) Protection, restoration, or preservation of areas in the tribal coastal zone that hold—

(i) important ecological, cultural, or sacred significance for such tribe; or

(ii) traditional, historic, and esthetic values essential to such tribe.

(B) Preparing and implementing a special area management plan and technical planning for important coastal areas.

(C) Any coastal or shoreline stabilization measure, including any mitigation measure, for the purpose of public safety, public access, or cultural or historical preservation.