

cant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 1456a of this title.

(Pub. L. 89-454, title III, §307, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1285; amended Pub. L. 94-370, §6, July 26, 1976, 90 Stat. 1018; Pub. L. 95-372, title V, §504, Sept. 18, 1978, 92 Stat. 693; Pub. L. 101-508, title VI, §6208, Nov. 5, 1990, 104 Stat. 1388-307; Pub. L. 102-587, title II, §2205(b)(13), (14), Nov. 4, 1992, 106 Stat. 5051.)

#### REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (c)(3)(B), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (f), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

#### CODIFICATION

In subsec. (d), "section 6506 of title 31" substituted for "title IV of the Intergovernmental Coordination [Cooperation] Act of 1968 [42 U.S.C. 4231 et seq.]" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

#### AMENDMENTS

1992—Subsec. (c)(3)(B). Pub. L. 102-587, §2205(b)(13), made technical amendment to directory language of Pub. L. 101-508, §6208(b)(3)(B). See 1990 Amendment note below.

Subsec. (i). Pub. L. 102-587, §2205(b)(14), designated existing provisions as par. (1), added pars. (2) and (3), and struck out at end of par. (1) "The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c) of this section."

1990—Subsec. (c)(1). Pub. L. 101-508, §6208(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs."

Subsec. (c)(2). Pub. L. 101-508, §6208(b)(1), which directed the insertion of "the enforceable policies of" before "approved State management programs", was executed by making the insertion before "approved state management programs" to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 101-508, §6208(b)(2), in first sentence inserted ", in or outside of the coastal zone," after "to conduct an activity", substituted "any land or water use or natural resource of" for "land or water uses in", and inserted "the enforceable policies of" after "the proposed activity complies with".

Subsec. (c)(3)(B). Pub. L. 101-508, §6208(b)(3)(A), substituted "land or water use or natural resource of" for "land use or water use in" in first sentence.

Pub. L. 101-508, §6208(b)(3)(B), as amended by Pub. L. 102-587, §2205(b)(13), inserted "the enforceable policies of" after "such plan complies with" in first sentence.

Subsec. (d). Pub. L. 101-508, §6208(b)(4), substituted ", in or outside of the coastal zone, affecting any land or water use of natural resource of" for "affecting" and inserted "the enforceable policies of" after "that are inconsistent with".

Subsec. (i). Pub. L. 101-508, §6208(c), added subsec. (i).

1978—Subsec. (c)(3)(B)(ii). Pub. L. 95-372 inserted ", except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed" after "as provided for in subparagraph (A)".

1976—Subsec. (b). Pub. L. 94-370, §6(2), struck out provisions requiring that in case of serious disagreement between Federal agency and state in development of program, Secretary shall seek to mediate the differences in cooperation with the Executive Office of the President and incorporated such provision into subsec. (h).

Subsec. (c)(3). Pub. L. 94-370, §6(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 94-370, §6(4), added subsec. (h) which incorporates former provision of subsec. (b) relating to mediation by Secretary of disagreements between Federal agencies and state.

### § 1456-1. Authorization of the Coastal and Estuarine Land Conservation Program

#### (a) In general

The Secretary may conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate State, regional, and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses or could be managed or restored to effectively conserve, enhance, or restore ecological function. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

#### (b) Property acquisition grants

The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

- (1) a Coastal Zone Management Plan or Program approved under this chapter;
- (2) a National Estuarine Research Reserve management plan;

(3) a regional or State watershed protection or management plan involving coastal states with approved coastal zone management programs; or

(4) a State coastal land acquisition plan that is consistent with an approved coastal zone management program.

**(c) Grant process**

The Secretary shall allocate funds to coastal states or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the coastal state's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the implementation of this section (if different from the coastal zone management program).

(2) Each participating coastal state, after consultation with local governmental entities and other interested stakeholders, shall identify priority conservation needs within the State, the values to be protected by inclusion of lands in the program, and the threats to those values that should be avoided.

(3) Each participating coastal state shall to the extent practicable ensure that the acquisition of property or easements shall complement working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the program, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) 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 submittal to the Secretary.

(7)(A) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological value.

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

(i) are under an imminent threat of conversion to a use that will degrade or otherwise diminish their natural, undeveloped, or recreational state; and

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

(8) In developing guidelines under this section, the Secretary shall consult with coastal

states, other Federal agencies, and other interested stakeholders with expertise in land acquisition and conservation procedures.

(9) Eligible coastal states or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 1455a(e) of this title.

(10) The Secretary shall develop performance measures that the Secretary shall use to evaluate and report on the program's effectiveness in accomplishing its purposes, and shall submit such evaluations to Congress triennially.

**(d) Limitations and private property protections**

(1) A grant awarded under this section may be used to purchase land or an interest in land, including an easement, only from a willing seller. Any such purchase shall not be the result of a forced taking under this section. Nothing in this section requires a private property owner to participate in the program under this section.

(2) Any interest in land, including any easement, acquired with a grant under this section shall not be considered to create any new liability, or have any effect on liability under any other law, of any private property owner with respect to any person injured on the private property.

(3) Nothing in this section requires a private property owner to provide access (including Federal, State, or local government access) to or use of private property unless such property or an interest in such property (including a conservation easement) has been purchased with funds made available under this section.

**(e) Recognition of authority to control land use**

Nothing in this chapter modifies the authority of Federal, State, or local governments to regulate land use.

**(f) Matching requirements**

**(1) In general**

The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

**(2) Cost share requirement**

**(A) In general**

Grant funds under the program shall require a 100 percent match from other non-Federal sources.

**(B) Waiver of requirement**

The Secretary may grant a waiver of subparagraph (A) for underserved communities, communities that have 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 deems appropriate and consistent with the purposes of the program.

**(3) Other Federal funds**

Where financial assistance awarded 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.

**(4) Source of matching cost share**

For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

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

(i) the land meets the criteria set forth in section 2(b)<sup>1</sup> and is acquired in the period beginning 3 years before the date of the submission of the grant application and ending 3 years after the date of the award of the grant;

(ii) the value of the land or easement is held by a non-governmental organization included in the grant application in perpetuity for conservation purposes of the program; and

(iii) the land or easement is connected either physically or through a conservation planning process to the land or easement that would be acquired.

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

(C) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award, or, for lands described in<sup>2</sup> (A), within the same time limits described therein. These costs may include either cash or in-kind contributions.

**(g) Reservation of funds for National Estuarine Research Reserve sites**

No less than 15 percent of funds made available under this section shall be available for acquisitions benefitting National Estuarine Research Reserves.

**(h) Limit on administrative costs**

No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2009 and triennially thereafter.

**(i) Title and management of acquired property**

If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide—

(1) such assurances as the Secretary may require that—

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

(B) the property will be managed in a manner that is consistent with the purposes for

which the land entered into the program and shall not convert such property to other uses; and

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

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

**(j) Requirement for property used for non-Federal match**

If the grant recipient elects to use any land or interest in land held by a non-governmental organization as a non-Federal match under subsection (g), the grant recipient must to the Secretary's satisfaction demonstrate in the grant application that such land or interest will satisfy the same requirements as the lands or interests in lands acquired under the program.

**(k) Definitions**

In this section:

**(1) Conservation easement**

The term “conservation easement” includes an easement or restriction, recorded deed, or a reserve interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this section except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

**(2) Interest in property**

The term “interest in property” includes a conservation easement.

**(l) Authorization of appropriations**

There are authorized to be appropriated to the Secretary to carry out this section \$60,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 89-454, title III, §307A, as added Pub. L. 111-11, title XII, §12502, Mar. 30, 2009, 123 Stat. 1442.)

**§ 1456a. Coastal Zone Management Fund**

(a)(1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before November 5, 1990, and any repayment schedule established pursuant to this chapter as in effect before November 5, 1990, are not altered by any provision of this chapter. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the in-

<sup>1</sup> So in original. Probably should be “subsection (b)”.

<sup>2</sup> So in original. Probably should be followed by “subparagraph”.