

DISTRICT OF COLUMBIA FLOOD PREVENTION ACT OF
2019

DECEMBER 3, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2185]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2185) to amend the Coastal Zone Management Act of 1972 to allow the District of Columbia to receive Federal funding under such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2185 is to amend the Coastal Zone Management Act of 1972 to allow the District of Columbia to receive federal funding under such Act, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Coastal Zone Management Act of 1972¹ (CZMA) provides a number of avenues through which states and territories can address the impacts of climate change and ensure that access to key coastal areas is protected in the face of rising seas and other threats from climate change. The CZMA allows for voluntary partnerships between the federal government and coastal states and

¹ Pub. L. No. 92-583, 86 Stat. 1280 (1972).

territories to help participating jurisdictions develop coastal management programs (CMP) that balance competing uses of the coastal zone and ensure the protection of the nation’s coasts.

States and territories receive two primary benefits from participating in the program: (1) financial assistance through federal grants to develop and implement CMPs and (2) the ability to review and officially object to any development that is inconsistent with its CMP. Currently, thirty-four states and territories, including states surrounding the Great Lakes, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, are eligible to participate and have CMPs.² (Alaska is also eligible but withdrew its participation in 2011.)³ Tribes and the District of Columbia are not eligible to participate.

However, according to the best available data, over half of the District is located in the coastal plain physiographic province.⁴ Nuisance coastal flooding is significant in the District and has only gotten worse—one analysis has estimated that since the late 1950s, nuisance coastal flooding has increased in average frequency by 373 percent in the District.⁵ Furthermore, sea level rise along the Atlantic from Virginia northward is projected to be higher than the worldwide average for “almost all” future scenarios, further demonstrating the increasing threat of coastal flooding to the region.⁶

The District of Columbia is the only coastal entity in the United States besides tribal communities that is not eligible to participate in the CZMA. H.R. 2185 allows the District to participate in the CZMA, which would provide critical technical and financial support to assist the District with mitigating flooding and protecting coastal resources as the impacts from climate change continue to accrue.

COMMITTEE ACTION

H.R. 2185 was introduced on April 9, 2019, by Representative Eleanor Holmes Norton (D-DC). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On July 25, 2019, the Subcommittee held a hearing on the bill. On September 25, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 15 nays, as follows:

²EVA LIPIEC, CONG. RESEARCH SERV., R45460, COASTAL ZONE MANAGEMENT ACT (CZMA): OVERVIEW AND ISSUES FOR CONGRESS 3 (2019).

³*Id.* at 3 n.11.

⁴N.M. FENNEMAN & D.W. JOHNSON, U.S. GEOLOGICAL SURVEY, PHYSIOGRAPHIC DIVISIONS OF THE CONTERMINOUS U.S. (1946), dataset available at <https://water.usgs.gov/GIS/metadata/usgswrd/XML/physio.xml>; *see also* TRISTA THORBERRY-EHRLICH, NAT’L PARK SERV., NAT. RES. REP. NPS/NRPC/GRD/NRR—2009/146, ROCK CREEK PARK GEOLOGIC RESOURCES INVENTORY REPORT 3 fig.1 (2009), <https://irma.nps.gov/DataStore/DownloadFile/425528>. *See generally* *Washington’s Geologic Setting*, U.S. GEOLOGICAL SURVEY, <https://pubs.usgs.gov/gip/stones/setting.html> (last revised Jan. 13, 1999).

⁵NAT’L CAPITAL PLANNING COMM’N, FLOOD RISK MANAGEMENT PLANNING RESOURCES FOR WASHINGTON, DC 47 (2018), https://www.npc.gov/docs/Flood_Risk_Management_Planning_Resources_January_2018.pdf.

⁶NOAA, NOAA TECHNICAL REPORT: NOS CO-OPS 083, GLOBAL AND REGIONAL SEA LEVEL RISE SCENARIOS FOR THE UNITED STATES vii (2017), https://tidesandcurrents.noaa.gov/publications/techrpt83_Global_and_Regional_SLR_Scenarios_for_the_US_final.pdf.

Date: September 25, 2019

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 2185

Amendment:

Disposition: Final Passage: H.R. 2185 was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 15 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA	X		
3	Mr. Case, HI	X		
4	Mr. Clay, MO			
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO			
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (Chair)	X		
12	Ms. Haaland, NM	X		
13	Mr. Horsford, NV			
14	Mr. Huffman, CA	X		
15	Mr. Levin, CA	X		
16	Mr. Lowenthal, CA	X		
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA	X		
19	Mr. Neguse, CO	X		
20	Mr. Sablan, CNMI	X		
21	Mr. San Nicolas, GU			
22	Mr. Soto, FL	X		
23	Mr. Van Drew, NJ	X		
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY	X		
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY			
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA			
10	Mr. Hern, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA		X	
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL		X	
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA		X	
19	Mr. Young, AK			
	TOTALS	20	15	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of section 103(i) of H.Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 2185: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on July 25, 2019.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title**Section 2. Eligibility of District of Columbia for federal funding under the Coastal Zone Management Act of 1972*

This section amends the CZMA to add the District of Columbia to the term “coastal state” (16 U.S.C. 1453(4)), allowing the District of Columbia to develop and implement a coastal zone management program and be eligible for CZMA grant funding.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 10, 2019.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2185, the District of Columbia Flood Prevention Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2185, District of Columbia Flood Prevention Act of 2019			
As ordered reported by the House Committee on Natural Resources on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 2185 would amend the Coastal Zone Management Act of 1972 to make the District of Columbia eligible to receive grants and technical assistance from the National Oceanic and Atmospheric Administration (NOAA) to develop and implement a local coastal management program. In 2019, NOAA allocated \$76 million to coastal management grants for the 34 coastal states and territories participating in the program.

Using information from NOAA on the historical amount of funding provided for coastal management assistance relative to the size of the coastal zones covered, CBO estimates that making the District of Columbia eligible to receive such assistance would cost less than \$500,000 over the 2020–2024 period. Such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Coastal Zone Management Act of 1972 to allow the District of Columbia to receive federal funding under such Act.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Ac-

countability Office to Congress pursuant to section 21 of Public Law 111-139. The Coastal Zone Management Administration Awards (CFDA No. 11.419) modified by this bill are related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. 6104: Sea Grant Support (CFDA No. 11.417), Coastal Zone Management Estuarine Research Reserves (CFDA No. 11.420), Financial Assistance for National Centers for Coastal Ocean Science (CFDA No. 11.426), Marine Sanctuary Program (CFDA No. 11.429), Regional Fishery Management Councils (CFDA No. 11.441), Chesapeake Bay Studies (CFDA No. 11.457), Congressionally Identified Awards and Projects (CFDA No. 11.469), Office for Coastal Management (CFDA No. 11.473), and Coral Reef Conservation Program (CFDA No. 11.482).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

COASTAL ZONE MANAGEMENT ACT OF 1972

TITLE III—MANAGEMENT OF THE COASTAL ZONE

* * * * *

DEFINITIONS

SEC. 304. For the purposes of this title—

(1) The term “coastal zone” means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes, islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or sec-

tion 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) The term “coastal resource of national significance” means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value.

(3) The term “coastal waters” means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bay-ou, ponds, and estuaries.

(4) The term “coastal state” means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes *the District of Columbia*, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.

(5) The term “coastal energy activity” means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, or in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10))).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be “in close proximity to” the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(6) The term “energy facilities” means any equipment or facility which is or will be used primarily—

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6a) The term “enforceable policy” means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

(7) The term “estuary” means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(8) The term “estuarine sanctuary” means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, or adjacent to such estuary, and which constitutes to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(9) The term “Fund” means the Coastal Zone Management Fund established under section 308(b).

(10) The term “land use” means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g).

(11) The term “local government” means any political subdivision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state’s coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(12) The term “management program” includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(13) The term “outer Continental Shelf energy activity” means any exploration for, or any development or production of, oil or natural gas from the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or the siting, construction, expansion, or operation of any new or

expanded energy facilities directly required by such exploration, development, or production.

(14) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(15) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(16) The term "Secretary" means the Secretary of Commerce.

(17) The term "special area management plan" means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

(18) The term "water use" means a use, activity, or project conducted in or on waters within the coastal zone.

* * * * *

DISSENTING VIEWS

Congress enacted the Coastal Zone Management Act (CZMA) to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.”¹

This law was passed to help with the management of the nation’s *coastal* resources, including the Great Lakes. Yet, this bill blatantly ignores geography by adding the District of Columbia to the list of eligible “coastal states” eligible for funding under the Act. Anyone who has looked at a map can clearly see that D.C. is not coastal and it is not a state—inconvenient facts that the Majority is all too happy to ignore. Adding non-coastal cities to the CZMA is a slippery slope. This bill justifies the addition because D.C. is bordered by the Potomac River, which through the Chesapeake Bay eventually connects to the Atlantic Ocean. Let us provide some perspective: the District of Columbia is 163 nautical miles from the Atlantic Ocean.²

Making the District of Columbia eligible under the CZMA opens the door to every city or any State within a river’s watershed to be eligible for funding under CZMA. Should Midwestern States along the Mississippi or Missouri Rivers be eligible for CZMA? That is what this bill appears to say. The *Coastal Zone Management Act* was created by Congress to help coastal States and territories—it is not a national land use statute. This legislation ignores the narrow Congressional intent behind the program and for this reason, we oppose this legislation.

ROB BISHOP (UT).
JODY B. HICE.
DANIEL WEBSTER.
MIKE JOHNSON (LA).
KEVIN HERN (OK).

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¹ 16 USC 1452.

² <https://nauticalcharts.noaa.gov/publications/docs/distances.pdf>.