

TO AMEND THE COASTAL BARRIER RESOURCES ACT TO
CREATE AN EXEMPTION FOR CERTAIN SHORELINE
BORROW SITES

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MARCH 12, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
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Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 524]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 524) to amend the Coastal Barrier Resources Act to create an exemption for certain shoreline borrow sites, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FEDERAL COASTAL STORM RISK MANAGEMENT PROJECTS.

Section 6(a) of the Coastal Barrier Resources Act (16 U.S.C. 3505(a)) is amended by adding at the end the following:

“(7) Use of a sand source within a System unit by Federal coastal storm risk management projects or their predecessor projects that have used a system unit for sand to nourish adjacent beaches outside the System pursuant to section 5 of the Act of August 18, 1941 (commonly known as the ‘Flood Control Act of 1941’) (55 Stat. 650, chapter 377; 33 U.S.C. 701n) at least once between December 31, 2008 and December 31, 2023 in response to an emergency situation prior to December 31, 2023.”.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 524 is to amend the Coastal Barrier Resources Act to create an exemption for certain shoreline borrow sites.

BACKGROUND AND NEED FOR LEGISLATION

Enacted in 1982, the Coastal Barrier Resources Act (CBRA) established the John H. Chafee Coastal Barrier Resources System (System), which is made up of undeveloped coastal barriers and other areas of the eastern seaboard and the Gulf of Mexico.¹ Section 5 of CBRA restricts the use of new federal funding that may encourage development inside the system.² The intention of these restrictions is to “minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers.”³

Section 6 of CBRA allows for certain exemptions to federal funding restrictions in CBRA, including for non-structural shoreline stabilization projects that are designed to mimic, enhance, or restore a natural stabilization system.⁴ Many coastal communities around the country use this exemption to renourish their beaches on a regular basis in order to mitigate the effects of beach erosion. However, due to a 2021 litigation-driven rulemaking decision by the Biden Administration, the exemption under Section 6 must be read in connection with the prohibition of expenditures of any kind within the system under Section 5 of CBRA.⁵ This means that federal beach renourishment projects cannot use sand from within the system unless they are granted an emergency exemption.

This interpretation of the exemption under Section 6 of CBRA has left several coastal communities without an adequate site to harvest sand for vital beach renourishment projects. In some cases, these communities have been using the same System areas for sand for decades. One of these communities is Wrightsville Beach, North Carolina, which has used sand from the Masonboro Inlet (inside the System) to renourish its beach since the 1960s. Their latest renourishment project was scheduled to take place in 2022. However, due to the 2021 interpretation of CBRA, the project was delayed.

Without the use of Masonboro Inlet, the town was forced to locate an alternate site. A site was located 2.5 miles offshore, but after surveying the site, the Corps found over 300,000 tires in the sand bed.⁶ These tires came from an artificial reef created by the North Carolina Department of Environmental Quality’s Division of Marine Fisheries. The presence of the tires delayed the renourishment project because of the need for additional surveying and environmental compliance. A few months after the Committee held a hearing on H.R. 524, the town was given an emergency exemption to use Masonboro Inlet an additional time to renourish their beach. That project will begin in January 2024.⁷ H.R. 524 would permanently allow the town to use Masonboro Inlet for beach renourishment going forward.

¹Pub. L. No. 97-348, § 3, Oct. 18, 1982, 96 Stat. 1653.

²*Id.*

³*Id.*

⁴*Id.* § 6(a)(6)(G).

⁵“Memorandum: Coastal Barrier Resources Act.” Sarah Krakoff. U.S. Department of the Interior. 7/14/2021. 20210714-CBRA-Nonstructural-Shoreline-Stabilization-Legal-Memo.pdf (fws.gov).

⁶*Id.*

⁷“As storm brew in the tropics, Wrightsville Beach nervously waits for its beach renourishment.” Gareth McGrath. Star News Online. 9/25/2023. Wrightsville Beach nourishment project approved after two year delay (starnews.com).

According to technical assistance received from the U.S. Army Corps of Engineers, the authorities provided in H.R. 524, as amended, would apply in Carolina Beach, North Carolina; Folly Beach, South Carolina; Stone Harbor, New Jersey, and Saint Augustine, Florida.

COMMITTEE ACTION

H.R. 524 was introduced on January 25, 2023, by Rep. David Rouzer (R–NC). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On May 10, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On November 15, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 524 by unanimous consent. Chairman Bruce Westerman (R–AR) offered an amendment in the nature of a substitute designated Westerman 066 ANS. Representative Jared Huffman (D–CA) offered an amendment to the amendment in the nature of a substitute designated Huffman #1—revised 2. The amendment to the amendment in the nature of a substitute was adopted by unanimous consent. The amendment in the nature of a substitute, as amended, was adopted by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on May 10, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Federal coastal storm risk management projects

Amends the Coastal Barrier Resources Act (16 U.S.C. 3505) by clarifying that restrictions on federal funding do not apply to federal funds obligated for the utilization of a sand source within a System unit by Federal coastal storm risk management projects or their predecessor projects if the source has been used at least once between December 31, 2008, and December 31, 2023, in response to an emergency situation prior to December 31, 2023.

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:

H.R. 524, a bill to amend the Coastal Barrier Resources Act to create an exemption for certain shoreline borrow sites			
As ordered reported by the House Committee on Natural Resources on November 15, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
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
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 524 would amend the Coastal Barrier Reef Act to establish an exception allowing federal financial assistance for certain projects that remove and transport sand from the Coastal Barrier Resource System (CBRS). The exception would apply only to coastal areas that have previously received sand from the CBRS for coastal storm risk management. Under current law, most projects are prohibited from using sand from the CBRS because the U.S. Fish and Wildlife Service (USFWS) identifies those coastal areas as protected to preserve fish and wildlife habitats and prevent loss of life or property.

In 2021, USFWS updated its guidance to prohibit removing sand from the CBRS for restoration activities outside of that system. After that guidance was updated, the Army Corps of Engineers conducted such beach restoration projects either through emergency exceptions to remove sand from the CBRS or by identifying alternative sources of sand.

Using information from the Corps, CBO expects that implementing the bill would not have a significant effect on the resources needed for or the timing of ongoing projects. As a result, CBO estimates that implementing the bill would not have a significant cost; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Coastal Barrier Resources Act to create an exemption for certain shoreline borrow sites.

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

According to the Congressional Budget Office, H.R. 524 contains no unfunded mandates as defined in the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of 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 Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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 italics and existing law in which no change is proposed is shown in roman):

COASTAL BARRIER RESOURCES ACT

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SEC. 6. EXCEPTIONS TO LIMITATIONS ON EXPENDITURES.

(a) IN GENERAL.—Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available within the System for the following:

- (1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried

out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.

(2) The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction.

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.

(4) Military activities essential to national security.

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.

(6) Any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:

(A) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under chapter 2003 of title 54, United States Code, and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(D) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

(7) *Use of a sand source within a System unit by Federal coastal storm risk management projects or their predecessor projects that have used a system unit for sand to nourish adjacent beaches outside the System pursuant to section 5 of the Act of August 18, 1941 (commonly known as the "Flood Control Act of 1941") (55 Stat. 650, chapter 377; 33 U.S.C. 701n) at least once between December 31, 2008 and December 31, 2023 in response to an emergency situation prior to December 31, 2023.*

(b) EXISTING FEDERAL NAVIGATION CHANNELS.—For purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

(c) EXPANSION OF HIGHWAYS IN MICHIGAN.—The limitations on the use of Federal expenditures or financial assistance within the System under subsection (a)(3) shall not apply to a highway—

- (1) located in a unit of the System in Michigan; and
- (2) in existence on the date of the enactment of the Coastal Barrier Improvement Act of 1990.

(d) SERVICES AND FACILITIES OUTSIDE SYSTEM.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) of this subsection, limitations on the use of Federal expenditures or financial assistance within the System under section 5 shall not apply to expenditures or assistance provided for services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System (as depicted on the maps referred to in section 4(a)) which relate to an activity within that unit.

(2) PROHIBITION OF FLOOD INSURANCE COVERAGE.—No new flood insurance coverage may be provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) for any new construction or substantial improvements relating to services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(3) PROHIBITION OF HUD ASSISTANCE.—

(A) IN GENERAL.—No financial assistance for acquisition, construction, or improvement purposes may be provided under any program administered by the Secretary of Housing and Urban Development for any services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(B) DEFINITION OF FINANCIAL ASSISTANCE.—For purposes of this paragraph, the term “financial assistance” includes any contract, loan, grant, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

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