WORKING WATERFRONTS IN ALABAMA AND MISSISSIPPI

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Increasing development pressures in America's coastal areas are threatening to displace traditional water-dependent industries like fishing and public recreation. In recent years legislators at the federal and state levels have taken steps to protect these valued uses by developing legislation to maintain the viability of working waterfronts. So far the preferred mechanisms are grants and incentives, rather than regulation.

This paper examines the pending federal working waterfronts legislation, as well as the efforts of three states: Maine, Florida, and New York. There is also a description of potential funding sources and financial incentives for working waterfront efforts in Alabama and Mississippi.

LEGISLATION

Senate Bill 1723

On September 19, 2005, Senator Susan M. Collins (ME) introduced Senate Bill 1723, known as the "Working Waterfront Preservation Act of 2005." The bill, co-sponsored by Senators Edward Kennedy (MA), John Kerry (MA), Trent Lott (MS), Jack Reed (RI), and Olympia Snowe (ME), was immediately referred to the Senate Committee on Finance. No major action has been taken on S. 1723 since then.

The bill would amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a fund for the acquisition of waterfront property by state and local governments, nonprofit organizations, and fishing cooperatives to provide access for commercial fishing and aquaculture industries. It would appropriate $50 million in 2005 and 2007 to fund eligible projects, which are projects "to acquire real property or an interest in real property in a Coastal State for the purpose of providing access to persons engaged in the commercial fishing industry or the aquaculture industry to coastal waters in working waterfront areas." A working waterfront area is defined as "land that is used for or that supports commercial fishing or the aquaculture industry."

The bill would require grant applications to be submitted to state fisheries agencies, who would be responsible for reviewing the value of the commercial fishing and other industries in the community, the needs of these industries, and alternative locations for the project. Applications would be forwarded to the Secretary of Commerce, along with an assessment of need prepared by the agency. Funds awarded under this program could only be used to acquire property from willing sellers and the use of eminent domain would be expressly prohibited. To receive funding, grant recipients would have to enter into an agreement providing the Secretary with assurances that the property would not be converted to an inconsistent use. In addition, S. 1723 would provide a fifty percent tax break to individuals selling their land to grant recipients.

Maine

In August 2005, the Maine Legislature passed Senate Paper 338 to protect the state's waterfront commercial fishing facilities. The bill called for a vote on a $33 million bond issue to fund a variety of projects. Mainers approved the bond issue on November 8, 2005. $2 million of the $33 million will fund the Maine Working Waterfront Access Pilot Program. The Program will encourage the purchase of strategically important working waterfronts that are in danger of conversion to other uses. Mainers voted to give the state the authority to issue $12 million in bonds to buy property and conservation easements to preserve water access and working waterfronts. This $12 million will be matched by another $7 million in donations. Mainers also voted to amend the Maine Constitution to authorize the assessment of property taxes for waterfront property used by commercial fishers based upon the land's current use, rather than its potential for development. This measure will help ensure that high tax bills do not force commercial fishers to sell their property.

Several other working waterfront legislative initiatives have been introduced in the Maine Legislature. House Paper 645 proposed the creation of the Working Waterfront Access Program, through which the state would be authorized to issue $30 million in bonds for farmland assistance and "to help people who fish commercially gain or maintain access to the working waterfront." HP 645 officially died in the Maine Senate in April 2006. A separate bill, House Paper 704, would authorize up to $3 million in grants for the purchase of working waterfront property. HP 704 is still alive as of April 2006.

Florida

Befitting a state with such a long and commercially vibrant coastline, Florida has probably done more extensive legislating in the area of working waterfronts than any other state.

In 1996, the Florida Coastal Management Program conducted a study to identify the needs of communities wishing to revitalize their waterfronts. The study led to the creation of the Waterfronts Florida Partnership Program (WFPP) in 1997, which offers grants and planning assistance for communities seeking to revitalize waterfront areas and promote traditional waterfront trades. The Program resides in the Florida Department of Community Affairs (DCA), and is funded by the Florida Department of Environmental Protection, Florida Coastal Management Program, and the National Oceanic and Atmospheric Administration (NOAA). The WFPP was codified by the Florida Legislature in 2005 through the Working Waterfront Protection Act (codified at Fla. Stat. §§ 342.07, 342.201).

Communities eligible to take advantage of the program are those which are required to have a coastal element to their comprehensive plan: "[u]nits of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation…constitute the dominant plant community." Fla. Stat. §§ 163.3177(6)(g), 380.24. In addition, according to the DCA, communities should have a traditionally water-dependent economy, a comprehensive plan that is in compliance with Florida law, and a targeted waterfront area that is not a deepwater port. Non-profit groups may also participate in the WFPP if they are working with an eligible community. WFPP participants must “commit to form a waterfronts working committee representing the broad interests in the waterfront area and community” and “must have financial ability to support a local program manager to be on board by time of designation.” *Waterfronts Florida Partnership Program* brochure, Fla. Dept. of Community Affairs (available at http://www.dca.state.fl.us/fdcp/DCP/waterfronts/Waterfronts%20Florida%20Info%20Sheet.pdf). The WFPP will provide technical assistance in “planning, revitalization, environmental protection, and a host of other redevelopment issues,” training opportunities, and “limited funds over two years to assist in planning and implementing projects.” *Id*.

The Act expanded the scope of the Program to include recreational use of waterfronts, and mandated that all future comprehensive land use plans offer incentives and strategies to preserve working waterfronts. Comprehensive plans must contain “a shoreline use component that identifies public access to beach and shoreline areas and addresses the need for water-dependent and water-related facilities, including marinas, along shoreline areas. Such component must include the strategies that will be used to preserve recreational and commercial working waterfronts” as defined by the statute. Fla. Stat. § 163.3178(2).

The statute defines a “recreational and commercial working waterfront” as “a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state.” Fla. Stat. § 342.07(2). Working waterfronts may contain support facilities for recreational, commercial, research, or government vessels. Such facilities include “docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities and other support structures over water.” *Id*. Seaports are not considered working waterfronts within the statutory meaning.

The WFPP has operated in eighteen communities to date, on both coasts. The WFPP communities nearest Alabama are Bagdad, Ft. Walton Beach, St. Andrews, Port St. Joe, Apalachicola, and Panacea.

Florida statutes also allow county commissions and cities to write ordinances that defer ad valorem taxes and non-ad valorem assessments for working waterfront property owners. The taxes and assessments may be waived so long as the property is maintained as a working waterfront. If the property ceases to be used as a recreational or commercial working waterfront, the Act requires back payment of all deferred taxes and assessments. Fla. Stat. § 197.303. This may discourage landowners from selling working waterfronts for non-working waterfront development.

Other States

Though Florida and Maine are the models for working waterfront preservation, other states have less publicized or focused programs. New York, for instance, assists shoreline communities with the development of local waterfront revitalization programs, comprehensive use plans to assist in the preservation of working waterfronts and remedy other coastal issues. The New York Waterfront Revitalization of Coastal Areas and Inland Waterways Act encourages partnerships between shoreline cities and the state government to balance the need for economic development with protection of the Sound's natural resources.

FUNDING SOURCES AND FINANCIAL INCENTIVES

GO Zone Act Assistance

In 2005 Congress passed the Gulf Opportunity Zone (GO Zone) Act to assist in the rebuilding of areas affected by Hurricane Katrina. The GO Zone Act offers a variety of tax incentives, some of which could be used by working waterfront communities within designated GO Zones (which include the coastal counties of Alabama and Mississippi). These include:

- An increase in the Rehabilitation Tax Credit to help restore commercial buildings. The existing tax credit of 10 percent of qualified expenditures incurred for qualified rehabilitated buildings was increased to 13 percent. For historic structures, this credit was increased from 20 percent to 26 percent. These increases apply to qualifying expenses incurred from August 28, 2005 through December 31, 2008.
- Fifty percent bonus depreciation within the Zone. This incentive allows businesses to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new property investments made in the Zone. This depreciation allowance applies to software, leasehold improvements, and certain equipment and real estate expenditures. All depreciation deductions would be exempt from Alternative Minimum Taxes. This provision applies to property placed in service through December 31, 2007, or December 31, 2008 for real property. The provision also provides a one-year extension of time to place assets in service in the Zone in order to qualify for the bonus depreciation provided in the Jobs and Growth Tax Relief Reconciliation Act of 2003.
- Enhanced Section 179 expensing for small businesses. Eligible small businesses (businesses with less than $400,000 of annual investments) may expense $200,000 of investment made in the Zone. This amount is up from $100,000, and will be allowed on investments from August 28, 2005 through December 31, 2007. The phase-out floor for investment is also increased from $400,000 to $1 million through 2007.
- The net operating loss carryback period is extended from two to five years for losses attributable to:
    - New investment and repair of existing investment damaged by Hurricane Katrina
    - Business casualty losses due to Hurricane Katrina

    - Moving expenses and temporary housing expense for employees working in areas damaged by Hurricane Katrina.

  Taxpayers with losses associated with public utility property caused by Hurricane Katrina may either carry back a net operating loss attributable to certain casualty losses ten years, or treat certain casualty losses as having occurred five years prior to the disaster.
- Businesses may expense 50 percent of cleanup and demolition costs in the Zone. Brownfield expensing is also extended and expanded to include sites contaminated by petroleum products. This incentive expires after December 31, 2007.
- Expansion of the Employee Retention Tax Credit. Provides a tax credit equal to 40 percent of the first $6,000 of wages paid per employee to employers that maintain eligible employees on their payroll. Wages must have been paid prior to January 1, 2006. This credit is available to employers whose businesses are inoperable as a result of damage sustained by Hurricane Katrina, and is not affected if the employee reported to work at another location while the business was inoperable.
- Increase in New Markets Tax Credits. $1 billion in New Markets Tax Credit authority is provided from 2005 through 2007. This authority is for investment in Community Development Entities with recovery and redevelopment of the Zone as a significant mission.
- Additional bonding authority. To assist in the rebuilding effort, the states are authorized to issue a special class of private activity bonds called GO Zone Bonds outside the state volume caps. The states or their municipalities may issue these bonds, with the proceeds used to pay for acquisition, construction, and renovation of non-residential real property. Low-income housing rules are relaxed, so more bond proceeds may be used to rebuild housing in the Zone. Mortgage revenue bonds may be used to repair homes (up to $150,000), with the first-time homebuyer rule waived. Interest payments are not subject to Alternative Minimum Taxes. This authority expires after December 31, 2010.
- Allowance for Mississippi and municipalities to reduce costs by restructuring outstanding debt. One additional advance refunding before January 1, 2011 is allowed for states and municipalities within the Zone, with an additional authorization for Mississippi of $2.25 billion. This allows the bond issuer to restructure eligible debt by refinancing at a lower rate or spreading interest over a longer period of time. Certain 501(c)(3) bonds are also eligible for advance refunding as well.
- Authorization of Gulf Tax Credit Debt Service Bonds. The states are authorized to issue debt service tax credit bonds to help devastated communities meet their debt service requirements as a result of the hurricane. Bonds must mature no more than two years after issuance, and must be issued before January 1, 2007.

Source: Mississippi Development Authority.

Community Development Block Grants

The Community Development Block Grant program is intended to help local units of government realize their potential by providing funds necessary to ensure decent housing, basic community services, environmental quality and economic opportunities for their residents. The program makes funds available to local units of government that show a genuine need for specific projects and can meet state and federal eligibility requirements. In accordance with the Community Development Act of 1974, as amended, project activities must meet at least one of the following national objectives: (1) benefit low- and moderate-income persons; (2) aid in the prevention or elimination of slums or blight; (3) meet urgent needs because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs. The program is administered by the Alabama Department of Economic and Community Affairs and the Mississippi Development Authority.

Alabama Industrial Development Grant Program (Site Preparation)

Alabama law authorizes the State Industrial Development Authority to sell bonds to make grants to counties, municipalities, local industrial development boards or authorities or economic development councils or authorities, airport authorities, port authorities or public corporations to pay for site preparation for land owned or possessed by lease by these entities. A qualifying project (1) is one at which the predominate trade or business activity conducted will constitute industrial, warehousing, or research activities, or development and testing service providers, and (2) is a headquarters facility. This program could be useful for working waterfront industries like vessel construction.

Alabama Infrastructure Grant Program

Funds are available from the Infrastructure Grant Program to facilitate the location or expansion of existing industry by, for example, building or improving water lines, sewer lines, and/or access roads. Grants can range from $35,000 to $200,000, and must include a public fund match of at least 20 percent in most cases. More information may be obtained from the Alabama Development Office.

Alabama Industrial Access Road and Bridge Program

The Alabama Industrial Access Road and Bridge Program, administered by the Alabama Department of Transportation, provides financial assistance to communities for industrial access to new and expanding industries. The program allows for the construction of roads, bridges, etc. on public right-of-ways in conjunction with industrial projects. A local sponsor is required; usually, this entity is a city or county.

Mississippi Tidelands Trust Fund

The Mississippi Secretary of State administers the Public Trust Tidelands Fund, which receives money from leases of tidelands and submerged lands. Money from the fund is distributed to the Department of Marine Resources "for new and extra programs of tidelands management, such as conservation, reclamation, preservation, acquisition, education or the enhancement of public access to the public trust tidelands or public improvement projects as they relate to those lands." Miss. Code § 29-15-9(2). Coastal communities may compete for these funds, which could be used to finance working waterfront projects. Among the criteria for receipt of funds is enhancement of public access.

Mississippi Infrastructure Development Grant Program

The Mississippi Development Infrastructure Program, administered by the Mississippi Development Authority, provides grants to counties or municipalities to finance small infrastructure projects to promote economic growth. Projects must be directly related to the construction, renovation, or expansion of a new or expanded industry, and must be publicly owned. The maximum grant is $150,000.

Mississippi Job Protection Grant Program

The Mississippi Job Protection Grant Program, administered by the Mississippi Development Authority, provides grants to “at risk” industries that have been operating in the state for at least three years and have lost jobs, or risk losing jobs, because of outsourcing. Grants may be used for job retention and to improve productivity and competitiveness. The maximum grant is $200,000. The Authority also provides loans under a similar program.

Mississippi Local Governments Capital Improvements Revolving Loan Program

The Local Government Capital Improvements Revolving Loan Program makes loans to Mississippi counties and municipalities to finance capital improvements. Many types of projects that are potentially relevant to working waterfronts are eligible, including renovation, repair, and/or purchase of buildings for economic development purposes. The maximum yearly loan amount is $750,000 ($500,000 tax exempt), and maximum outstanding balance is $2.5 million.

Mississippi Business Investment Program

The Mississippi Business Investment Act Program, administered by the Mississippi Development Authority, makes grants and/or loans to counties or incorporated cities or towns, acting individually or jointly, to finance authorized improvements for projects necessary to compliment investments by private companies that will increase domestic and international commerce and create and maintain new full-time jobs in the state. The minimum loan is $500,000, and the maximum term is ten years.