

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 322

To amend the Land and Water Conservation Fund Act of 1965 to ensure sufficient funding for Federal and State projects and for maintenance and security needs, to encourage multipurpose acquisitions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Land and Water Conservation Fund Act of 1965 to ensure sufficient funding for Federal and State projects and for maintenance and security needs, to encourage multipurpose acquisitions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Land and Water  
5 Conservation Fund Amendments of 1993”.

6 **SEC. 2. FINDINGS, PURPOSES, AND POLICY.**

7 (a) FINDINGS.—Congress finds the following:

1           (1) The Land and Water Conservation Fund  
2 Act of 1965 (16 U.S.C. 460l-4 et seq.) was enacted  
3 to assist in preserving, developing, and assuring ac-  
4 cessibility to all citizens of the United States of the  
5 present and future generations, such quality and  
6 quantity of outdoor recreation resources as are de-  
7 sirable for individual active participation in recre-  
8 ation and to strengthen the health and vitality of the  
9 citizens.

10           (2) In order to accomplish the purposes of such  
11 Act, Congress authorized funding to assist variously  
12 in the planning, acquisition, and development of nec-  
13 essary land and water areas by government agencies.

14           (3) The States and local governments occupy a  
15 pivotal role in accomplishing the purposes of such  
16 Act.

17           (4) Restoration of the existing recreation infra-  
18 structure and expansion of State and local recre-  
19 ation resources to meet population increases and de-  
20 mographic changes require a secure and predictable  
21 base of funding.

22           (5) In order for adequate public recreation uses  
23 to continue, Federal, State, and local resources are  
24 in need of maintenance, rehabilitation, and construc-  
25 tion.

1           (6) The continuing decay of public structures  
2           and systems necessary for recreation uses has now  
3           reached emergency proportions across the United  
4           States and necessitates immediate corrective action  
5           by Congress.

6           (7) Congress intended that outdoor recreation  
7           investments in public lands and waters and selected  
8           facilities be funded through the Land and Water  
9           Conservation Fund from—

10                 (A) receipts produced from those invest-  
11                 ments;

12                 (B) revenue produced from Outer Con-  
13                 tinental Shelf leases and royalties, which re-  
14                 flects the depletion of a nonrenewable natural  
15                 resource; and

16                 (C) proceeds from sales of surplus Federal  
17                 property.

18           (8) Congress intended that the revenue pro-  
19           duced from offshore oil and gas leases and royalties  
20           and the depletion of the nonrenewable natural re-  
21           source result in a legacy of public places accessible  
22           for public recreation use and benefit from resources  
23           belonging to all people, of all generations, and the  
24           enhancement of the most precious and most renew-

1       able natural resource of any nation—healthy and ac-  
2       tive citizens.

3           (9) The Land and Water Conservation Fund  
4       Act of 1965 (16 U.S.C. 460l-4 et seq.) originally  
5       provided an equitable proportion of funds guarantee-  
6       ing the States, and through the States, local govern-  
7       ments, 60 percent of available funds in recognition  
8       of their pivotal role in providing realistically avail-  
9       able public outdoor recreation.

10          (10) The original intention of such Act has not  
11       been carried forward in practice.

12          (11) Subsequent amendments to such Act have  
13       resulted in a significant reduction in the proportion  
14       of funds allocated to the States relative to the pro-  
15       portion available for Federal purposes.

16          (12) The States have not received an equitable  
17       proportion of funds sufficient to encourage the pub-  
18       lic recreational partnership envisioned by Congress  
19       or consistent with the State and local pivotal roles  
20       in providing public outdoor recreation.

21          (13) It is necessary to rectify apportionment of  
22       available funds in order to carry forward the original  
23       intention of such Act, for States to receive their full  
24       share, and to avoid a long-term national deficit of  
25       recreation investment.

1           (14) Sufficient revenue is produced annually  
2 from the sources identified for the Land and Water  
3 Conservation Fund to provide for equitably propor-  
4 tioned funds for the Federal, State, and local out-  
5 door recreation uses originally intended by Congress  
6 without the need to resort to other funding or to im-  
7 pact one use at the expense of the others.

8           (15) In addition to the benefits of recreation to  
9 public health, recreation and the availability of  
10 recreation resources are effective in lowering vandal-  
11 ism and juvenile crime, and provide healthy environ-  
12 ments for public accommodation, enjoyment, and ex-  
13 ercise.

14           (16) Urban and land use planners urgently rec-  
15 ommend the increased use of “green spaces” in ur-  
16 banized areas in order to mitigate environmental  
17 and population impacts and to protect surface and  
18 subsurface waters and wetlands that occur in or  
19 near large populated areas.

20           (17) The population of the United States con-  
21 tinues to expand while access to open space contin-  
22 ues to decrease in many regions of the United  
23 States, especially in and near metropolitan areas.

24           (18) State governments and local communities  
25 are increasingly hard-pressed to provide adequate

1 funds for recreation and for environmental protec-  
2 tion and resource conservation.

3 (19) The recreation and open space needs of  
4 States and local communities represent a more dy-  
5 namic and fluid environment that requires greater  
6 flexibility in the ways in which Federal funds can be  
7 used by States and communities.

8 (20) Sound environmental practices, urban  
9 planning and emergency preparedness, and recre-  
10 ation are compatible and consistent uses of public  
11 lands and resources and should be actively encour-  
12 aged in the planning, development, and acquisition  
13 of lands and waters for public access and for recre-  
14 ation.

15 (b) PURPOSE.—The purposes of this Act are—

16 (1) to strengthen the dedication of the United  
17 States to the goal of providing adequate recreation  
18 opportunities to all citizens; and

19 (2) to ensure that—

20 (A) adequate facilities are created and  
21 maintained on public lands and waters to facili-  
22 tate recreation opportunities consistent with the  
23 purposes for which the lands and waters are ac-  
24 quired;

1 (B) whenever possible multipurpose plan-  
2 ning occurs to coordinate between the Federal  
3 Government and the States the expenditures of  
4 public funds for both wise acquisition and use  
5 of lands and waters for recreation uses and  
6 compliance with laws protecting the environ-  
7 ment and public health; and

8 (C) the public lands and waters acquired  
9 for recreation are preserved, conserved, and  
10 maintained for present and future uses of citi-  
11 zens of the United States.

12 (c) POLICY.—It is the policy of Congress that—

13 (1) funds covered into the Land and Water  
14 Conservation Fund should to the extent possible be  
15 fully appropriated within the authorization for each  
16 fiscal year;

17 (2) all funds appropriated should be disbursed  
18 in accordance with the formula established in section  
19 6(b) of the Land and Water Conservation Fund Act  
20 of 1965 (16 U.S.C. 460l-8(b)) so that the State and  
21 local governments receive an equitable portion of  
22 funds in recognition of their pivotal role in establish-  
23 ing, maintaining, and preserving meaningful recre-  
24 ation opportunities for all citizens; and

1           (3) in expending funds for recreation purposes,  
2 both the Federal Government and the States  
3 should—

4           (A) to the greatest extent possible recog-  
5 nize that lands and waters appropriate for  
6 recreation can simultaneously serve other nec-  
7 essary and desirable environmental or public  
8 health or safety purposes; and

9           (B) accord a priority to the acquisition of  
10 lands and waters that serve these multipurpose  
11 uses.

12 **SEC. 3. APPROPRIATIONS FROM AND ALLOCATION OF**  
13 **FUND.**

14 Section 5 of the Land and Water Conservation Fund  
15 Act of 1965 (16 U.S.C. 460~~l~~-7) is amended—

16           (1) by designating the first and second sen-  
17 tences as subsection (a);

18           (2) by designating the third through last sen-  
19 tences as subsection (b); and

20           (3) by striking subsection (a) (as so designated)  
21 and inserting the following new subsection:

22           “(a)(1) There shall be submitted with the annual  
23 budget of the United States a comprehensive statement  
24 of the estimated requirements during the ensuing fiscal  
25 year for appropriations from the fund for land acquisition

1 by eligible Federal agencies pursuant to section 7 and for  
2 land acquisition by States and local governments pursuant  
3 to section 6.

4 “(2) For each fiscal year, there shall be made avail-  
5 able from the fund an amount that is not less than twice  
6 the amount that was made available to carry out section  
7 7(a)(1) for fiscal year 1992.

8 “(3)(A) Subject to subparagraph (B), and in each fis-  
9 cal year, 50 percent of the estimated requirements re-  
10 ferred to in paragraph (1) shall be designated for, and  
11 50 percent of the amounts made available from the fund  
12 shall be used to carry out, Federal purposes as described  
13 in section 7.

14 “(B) If the requirement of subparagraph (A) with re-  
15 spect to amounts made available from the fund is not met,  
16 funds made available for Federal purposes as described  
17 in section 7 shall be reduced and funds made available  
18 for financial assistance to States pursuant to section 6  
19 shall be increased so that the amounts are equal.”.

20 **SEC. 4. FUNDS FOR INDIAN TRIBES.**

21 Section 6(b)(5) of the Land and Water Conservation  
22 Fund Act of 1965 (16 U.S.C. 460l-8(b)(5)) is amended—

23 (1) by inserting “(A)” after “(5)”; and

24 (2) by adding at the end the following new sub-  
25 paragraph:

1           “(B)(i)(I) For the purposes of paragraph (1),  
2           all federally recognized Indian tribes and Alaska Na-  
3           tive Village Corporations (as defined in section 3(j)  
4           of the Alaska Native Claims Settlement Act (43  
5           U.S.C. 1602(j)) (except for those tribes and Village  
6           Corporations that enter into agreements pursuant to  
7           clause (ii)) shall be treated collectively as one State  
8           and shall receive shares of the apportionment under  
9           paragraph (1) in accordance with a competitive  
10          grant program established by the Secretary by rule  
11          in accordance with subclause (II).

12          “(II) The rule shall ensure that in each fiscal  
13          year no single tribe or Village Corporation receives  
14          more than 10 percent of the total amount made  
15          available to all tribes and Village Corporations pur-  
16          suant to the apportionment under paragraph (1).

17          “(III) Funds received by an Indian tribe or Vil-  
18          lage Corporation under this clause may be expended  
19          only for the purposes specified in paragraphs (1)  
20          and (3) of subsection (a).

21          “(ii)(I) In each fiscal year, in lieu of receiving  
22          funds under clause (i), a tribe or Village Corporation  
23          may establish by written agreement with the State  
24          in which the tribe is located the right of the tribe  
25          or Village Corporation to compete for a portion of

1 the funds made available to the State pursuant to  
2 this section.

3 “(II) Each State’s comprehensive statewide out-  
4 door recreation plan shall describe any agreement  
5 entered into pursuant to subclause (I).”.

6 **SEC. 5. MULTIPURPOSE ACQUISITIONS BY STATES.**

7 Section 6 of the Land and Water Conservation Fund  
8 Act of 1965 (16 U.S.C. 460I-8) is amended—

9 (1) in subsection (c)—

10 (A) in the first sentence, by striking “Pay-  
11 ments” and inserting “(1) Except as provided  
12 in paragraph (2), payments”; and

13 (B) by adding at the end the following new  
14 paragraph:

15 “(2)(A) Notwithstanding subsection (f)(3), payments  
16 to a State shall cover not more than 80 percent of the  
17 cost of each acquisition project undertaken by the State  
18 that—

19 “(i) is a multipurpose project in that the lands  
20 or waters to be protected are identified in a State  
21 or local recreation resource plan prepared pursuant  
22 to subsection (d), or a comparable public document,  
23 as appropriate for multiple public purposes in ac-  
24 cordance with subparagraph (B); and

1           “(ii) is granted a high priority in the State’s  
2           comprehensive statewide outdoor recreation plan  
3           prepared pursuant to subsection (d).

4           “(B) A project is appropriate for multiple public pur-  
5           poses if the project provides public recreation use and—

6           “(i) provides a natural or landscaped alter-  
7           native transportation route;

8           “(ii) provides wildlife habitat;

9           “(iii) results in the improvement of air and  
10          water quality;

11          “(iv) results in increased flood control;

12          “(v) results in enhanced social, aesthetic, or en-  
13          vironmental conditions in a neighborhood or commu-  
14          nity;

15          “(vi) provides other attributes of recreation  
16          space important to human health and welfare;

17          “(vii) enables the State or unit of local govern-  
18          ment to comply with a Federal, State, or local law  
19          that serves an environmental, public health, or pub-  
20          lic safety purpose; or

21          “(viii) meets more than one of the conditions  
22          described in clauses (i) through (vii).”; and

23          (2) in subsection (e)(1)—

1 (A) by designating the first and second  
 2 sentences as subparagraphs (A) and (C), re-  
 3 spectively; and

4 (B) by inserting after subparagraph (A)  
 5 (as so designated) the following new subpara-  
 6 graph:

7 “(B) Notwithstanding subsection (b)(2), in pro-  
 8 viding financial assistance for acquisitions, the Sec-  
 9 retary shall give highest priority to projects de-  
 10 scribed in subsection (c)(2).”.

11 **SEC. 6. MAINTENANCE AND SECURITY NEEDS AND SHEL-**  
 12 **TERED FACILITIES FOR STATES.**

13 Section 6 of the Land and Water Conservation Fund  
 14 Act of 1965 (16 U.S.C. 4601–8) is amended—

15 (1) in subsection (a), by striking “or (3) devel-  
 16 opment” and inserting “(3) development, (4) plan-  
 17 ning, (5) maintenance, or (6) security”; and

18 (2) in subsection (e)—

19 (A) in paragraph (2), by striking “: *Pro-*  
 20 *vided,*” and all that follows through the end of  
 21 the paragraph and inserting a period; and

22 (B) by adding at the end the following new  
 23 paragraphs:

1           “(3) PLANNING, MAINTENANCE, SECURITY, AND  
2 SHELTERED FACILITIES.—(A) Subject to subpara-  
3 graph (B)—

4           “(i) for planning and maintenance of facili-  
5 ties acquired and developed with financial as-  
6 sistance provided pursuant to this section;

7           “(ii) for costs of law enforcement and secu-  
8 rity personnel and other security measures that  
9 are necessary to ensure safe public access to  
10 and recreation use of lands and waters acquired  
11 with financial assistance provided pursuant to  
12 this section, except that not more than 10 per-  
13 cent of the funds used to carry out this clause  
14 may be used for personnel costs; and

15           “(iii) for development of sheltered facilities  
16 for public health or safety in connection with  
17 projects otherwise eligible for assistance under  
18 this section, including facilities for swimming  
19 pools and ice skating rinks in areas where the  
20 Secretary determines that the severity of cli-  
21 matic conditions and the increased public use  
22 made possible by the facilities justifies the con-  
23 struction of the facilities.

24           “(B) In each fiscal year, the Secretary may al-  
25 locate not more than 30 percent of the total amount

1 of financial assistance provided to each State for the  
2 purposes described in subparagraph (A).”.

3 **SEC. 7. PAYMENTS TO PRIVATE NONPROFIT ORGANIZA-**  
4 **TIONS.**

5 Section 6(f)(2) of the Land and Water Conservation  
6 Fund Act of 1965 (16 U.S.C. 460l-8(f)(2)) is amended—

7 (1) by designating the first and second sen-  
8 tences as subparagraphs (A) and (B), respectively;  
9 and

10 (2) by adding at the end the following new sub-  
11 paragraph:

12 “(C)(i) If consistent with an approved project, the  
13 State, political subdivision, or other appropriate public  
14 agency receiving funds pursuant to this paragraph may  
15 transfer funds to be used in accordance with clauses (ii)  
16 and (iii) to a private nonprofit organization that meets the  
17 requirements of clause (iv).

18 “(ii) Funds received pursuant to clause (i)—

19 “(I) may be used for projects approved in writ-  
20 ing by the grantor of the funds and only in associa-  
21 tion with—

22 “(aa) the acquisition of lands or interests  
23 in lands; and

24 “(bb) the development of recreation facili-  
25 ties; and

1           “(II) may not be used for administrative ex-  
2           penses.

3           “(iii) A private nonprofit organization that uses  
4 funds for acquisition shall itself hold, or shall convey in  
5 perpetuity in a timely manner, for public benefit, such in-  
6 terest as it may acquire to a recipient determined to be  
7 appropriate by the grantor of the funds.

8           “(iv) A private nonprofit organization may receive  
9 funds pursuant to clause (i) if the organization—

10           “(I) is qualified for exemption from income  
11 taxes under section 501(c)(3) of the Internal Reve-  
12 nue Code of 1986;

13           “(II) includes among its purposes the conserva-  
14 tion of recreation resources or the providing of, or  
15 enhancement or protection of, outdoor recreation op-  
16 portunities;

17           “(III) meets and complies with such guidelines  
18 for the receipt and use of the funds as are estab-  
19 lished by the Secretary; and

20           “(IV) provides full accountability for the use of  
21 the funds.

22           “(v) It is the intent of Congress that funds trans-  
23 ferred and utilized by a private nonprofit organization  
24 pursuant to this subparagraph will result in a greater pub-

1 lic benefit than would the utilization of the funds exclu-  
2 sively by a governmental entity.”.

3 **SEC. 8. MAINTENANCE OF EFFORT.**

4 (a) STATES.—Section 6(f) of the Land and Water  
5 Conservation Fund Act of 1965 (16 U.S.C. 460l–8(f)) is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(9) The Secretary may not provide financial assist-  
9 ance to a State under this Act unless the State agrees  
10 to maintain the expenditures of the State for purposes  
11 other than acquisition at a level equal to not less than  
12 80 percent of the average level of the expenditures main-  
13 tained for the 5 fiscal years preceding the fiscal year for  
14 which the financial assistance is provided.”.

15 (b) FEDERAL RECIPIENTS.—Section 7 of such Act  
16 (16 U.S.C. 460l–9) is amended by adding at the end the  
17 following new subsection:

18 “(d) MAINTENANCE OF EFFORT.—In utilizing funds  
19 received under this Act, each Federal recipient shall main-  
20 tain the expenditures of the Federal recipient for purposes  
21 other than acquisition at a level equal to not less than  
22 the level of the expenditures maintained for the fiscal year  
23 preceding the fiscal year for which the funds are re-  
24 ceived.”.



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