

108TH CONGRESS  
1ST SESSION

# S. 1208

To amend the Cooperative Forestry Assistance Act of 1978 to establish a program to provide assistance to States and nonprofit organizations to preserve suburban forest land and open space and contain suburban sprawl, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 9, 2003

Ms. COLLINS (for herself and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Cooperative Forestry Assistance Act of 1978 to establish a program to provide assistance to States and nonprofit organizations to preserve suburban forest land and open space and contain suburban sprawl, 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. SUBURBAN AND COMMUNITY FORESTRY AND**  
4       **OPEN SPACE PROGRAM.**

5       The Cooperative Forestry Assistance Act of 1978 (16  
6       U.S.C. 2101 et seq.) is amended by adding at the end  
7       the following:

1 **“SEC. 21. SUBURBAN AND COMMUNITY FORESTRY AND**  
 2 **OPEN SPACE PROGRAM.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COMMITTEE.—The term “Committee”  
 5 means a State Forest Stewardship Coordinating  
 6 Committee established under section 19(b).

7 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-  
 8 tity’ means a unit of local government or a nonprofit  
 9 organization that—

10 “(A) the Secretary determines, in accord-  
 11 ance with the criteria established under sub-  
 12 section (c)(1)(A)(ii)(II) is eligible to receive a  
 13 grant under subsection (c)(2); and

14 “(B) the State forester, in consultation  
 15 with the Committee, determines—

16 “(i) has the abilities necessary to ac-  
 17 quire and manage interests in real prop-  
 18 erty; and

19 “(ii) has the resources necessary to  
 20 monitor and enforce any terms applicable  
 21 to the eligible project.

22 “(3) ELIGIBLE PROJECT.—The term “eligible  
 23 project” means a fee purchase, easement, or dona-  
 24 tion of land to conserve private forest land identified  
 25 for conservation under subsection (c)(1)(A)(ii)(I).

1           “(4) INDIAN TRIBE.—The term ‘Indian tribe’  
2       has the meaning given the term in section 4 of the  
3       Indian Self-Determination and Education Assistance  
4       Act (25 U.S.C. 450b).

5           “(5) NONPROFIT ORGANIZATION.—The term  
6       “nonprofit organization” means any organization  
7       that is—

8           “(A) described in section 501(c) of the In-  
9       ternal Revenue Code of 1986; and

10          “(B) exempt from taxation under 501(a)  
11       of the Internal Revenue Code of 1986.

12          “(6) PRIVATE FOREST LAND.—The term ‘pri-  
13       vate forest land’ means land that is—

14          “(A) capable of producing commercial for-  
15       est products; and

16          “(B) owned by—

17               “(i) a private entity; or

18               “(ii) an Indian tribe.

19          “(7) PROGRAM.—The term ‘program’ means  
20       the Suburban and Community Forestry and Open  
21       Space Program established by subsection (b).

22          “(8) SECRETARY.—The term ‘Secretary’ means  
23       the Secretary of Agriculture, acting through the  
24       Chief of the Forest Service.

25          “(b) ESTABLISHMENT.—

1           “(1) IN GENERAL.—There is established within  
 2           the Forest Service a program to be known as the  
 3           ‘Suburban and Community Forestry and Open  
 4           Space Program’.

5           “(2) PURPOSE.—The purpose of the program is  
 6           to provide assistance to eligible entities to carry out  
 7           eligible projects to—

8                   “(A) conserve private forest land and  
 9                   maintain working forests in areas threatened by  
 10                  significant suburban sprawl or by conversion to  
 11                  nonforest uses; and

12                  “(B) provide communities a means by  
 13                  which to address significant suburban sprawl.

14           “(c) GRANT PROGRAM.—

15                  “(1) IDENTIFICATION OF ELIGIBLE PRIVATE  
 16                  FOREST LAND.—

17                   “(A) CRITERIA.—

18                          “(i) NATIONAL CRITERIA.—The Sec-  
 19                          retary shall establish national eligibility  
 20                          criteria for the identification of private for-  
 21                          est land that may be conserved under this  
 22                          section.

23                          “(ii) STATE CRITERIA.—The State  
 24                          forester, in consultation with the Com-  
 25                          mittee, shall, based on the criteria estab-

lished under clause (i), and subject to the approval of the Secretary, establish criteria for—

“(I) the identification, subject to subparagraph (B), of private forest land in each State that may be conserved under this section; and

“(II) the identification of eligible entities.

“(B) CONDITIONS FOR ELIGIBLE PRIVATE FOREST LAND.—Private forest land identified for conservation under subparagraph (A)(ii)(I) shall be land that, as determined by the State forester, in consultation with the Committee and subject to the approval of the Secretary—

“(i) is located in an area that is affected, or threatened to be affected, by significant suburban sprawl; and

“(ii) is threatened by present or future conversion to nonforest use.

“(2) GRANTS.—

“(A) ELIGIBLE PROJECTS.—

“(i) IN GENERAL.—In carrying out this section, the Secretary shall award

1 competitive grants to eligible entities to  
 2 carry out eligible projects.

3 “(ii) PUBLIC ACCESS.—Eligible enti-  
 4 ties are encouraged to provide public ac-  
 5 cess to land on which an eligible project is  
 6 carried out.

7 “(B) APPLICATION; STEWARDSHIP  
 8 PLAN.—An eligible entity that seeks to receive  
 9 a grant under this section shall submit to the  
 10 State forester—

11 “(i) at such time and in such form as  
 12 the Secretary shall prescribe, an applica-  
 13 tion for the grant (including a description  
 14 of any private forest land to be conserved  
 15 using funds from the grant and a descrip-  
 16 tion of the extent of the threat of conver-  
 17 sion to nonforest use); and

18 “(ii) a stewardship plan that describes  
 19 the manner in which—

20 “(I) any private forest land to be  
 21 conserved using funds from the grant  
 22 will be managed in accordance with  
 23 this section;

24 “(II) the stewardship plan will be  
 25 implemented; and

1 “(III) the public benefits to be  
 2 achieved from implementation of the  
 3 stewardship plan.

4 “(C) ASSESSMENT OF NEED.—With re-  
 5 spect to an application submitted under sub-  
 6 paragraph (B), the State forester shall—

7 “(i) assess the need for preserving  
 8 suburban forest land and open space and  
 9 containing suburban sprawl in the State;  
 10 and

11 “(ii) submit to the Secretary—

12 “(I) the application submitted  
 13 under subparagraph (B); and

14 “(II) the assessment of need.

15 “(D) APPROVAL OR DISAPPROVAL.—

16 “(i) IN GENERAL.—Subject to clause  
 17 (ii), as soon as practicable after the date  
 18 on which the Secretary receives an applica-  
 19 tion under subparagraph (C)(ii) or a re-  
 20 submission under subclause (II)(bb)(BB),  
 21 the Secretary shall—

22 “(I) review the application; and

23 “(II)(aa) award a grant to the  
 24 applicant; or

1 “(bb)(AA) disapprove the appli-  
2 cation; and

3 “(BB) provide the applicant a  
4 statement that describes the reasons  
5 why the application was disapproved  
6 (including a deadline by which the ap-  
7 plicant may resubmit the application).

8 “(ii) CONSIDERATIONS; PRIORITY.—In  
9 awarding grants under this section, the  
10 Secretary shall—

11 “(I) consider the need for the eli-  
12 gible project based on the assessment  
13 of need submitted under subpara-  
14 graph (C) and subject to any criteria  
15 under paragraph (1); and

16 “(II) give priority to applicants  
17 that propose to fund eligible projects  
18 that promote—

19 “(aa) the preservation of  
20 suburban forest land and open  
21 space;

22 “(bb) the containment of  
23 suburban sprawl;

24 “(cc) the sustainable man-  
25 agement of private forest land;



1 “(dd) community involve-  
2 ment in determining the objec-  
3 tives for eligible projects that are  
4 funded under this section; and

5 “(ee) community and school  
6 education programs and curricula  
7 relating to sustainable forestry.

8 “(3) COST SHARING.—

9 “(A) IN GENERAL.—The amount of a  
10 grant awarded under this section to carry out  
11 an eligible project shall not exceed 50 percent  
12 of the total cost of the eligible project.

13 “(B) ASSURANCES.—As a condition of re-  
14 ceipt of a grant under this section, an eligible  
15 entity shall provide to the Secretary such assur-  
16 ances as the Secretary determines are sufficient  
17 to demonstrate that the share of the cost of  
18 each eligible project that is not funded by the  
19 grant awarded under this section has been se-  
20 cured.

21 “(C) FORM.—The share of the cost of car-  
22 rying out any eligible project described in sub-  
23 paragraph (A) that is not funded by a grant  
24 awarded under this section may be provided in  
25 cash or in kind (including a donation of land).

1       “(d) USE OF GRANT FUNDS FOR PURCHASES OF  
2 LAND OR EASEMENTS.—

3               “(1) PURCHASES.—

4                       “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), funds made available, and  
6 grants awarded, under this section may be used  
7 to purchase private forest land or interests in  
8 private forest land (including conservation ease-  
9 ments) only from willing sellers at fair market  
10 value.

11                      “(B) SALES AT LESS THAN FAIR MARKET  
12 VALUE.—A sale of private forest land or an in-  
13 terest in private forest land at less than fair  
14 market value shall be permitted only on certifi-  
15 cation by the landowner that the sale is being  
16 entered into willingly and without coercion.

17               “(2) TITLE.—Title to private forest land or an  
18 interest in private forest land purchased under para-  
19 graph (1) may be held, as determined appropriate by  
20 the Secretary, by—

21                      “(A) a State;

22                      “(B) a unit of local government; or

23                      “(C) a nonprofit organization.

24               “(3) TERMINATION OF EASEMENT.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), all right, title, and interest  
3           of a unit of local government or nonprofit orga-  
4           nization in and to a conservation easement shall  
5           terminate and vest in the State if the State de-  
6           termines that—

7                   “(i) the unit of local government or  
8                   nonprofit organization is unable or unwill-  
9                   ing to enforce the terms of the conserva-  
10                  tion easement; or

11                  “(ii) the conservation easement has  
12                  been modified in a way that is inconsistent  
13                  with the purposes of the program.

14           “(B) CONVEYANCE TO ANOTHER UNIT OF  
15           LOCAL GOVERNMENT OR NONPROFIT ORGANIZA-  
16           TION.—If the State makes a determination  
17           under subparagraph (A), the State may convey  
18           or authorize the unit of local government or  
19           nonprofit organization to convey the conserva-  
20           tion easement to another unit of local govern-  
21           ment or nonprofit organization.

22           “(e) ADMINISTRATIVE COSTS.—The State, on ap-  
23           proval of the Secretary and subject to any regulations pro-  
24           mulgated by the Secretary, may use amounts made avail-

1 able under subsection (g) to pay the administrative costs  
2 of the State relating to the program.

3 “(f) REPORT.—The Secretary shall submit to Con-  
4 gress a report on the eligible projects carried out under  
5 this section in accordance with section 8(c) of the Forest  
6 and Rangeland Renewable Resources Planning Act of  
7 1974 (16 U.S.C. 1606(c)).

8 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to be appropriated to carry out this sec-  
10 tion—

11 “(1) \$50,000,000 for fiscal year 2004; and

12 “(2) such sums as are necessary for each fiscal  
13 year thereafter.”.

14 **SEC. 2. FOREST LEGACY PROGRAM.**

15 Section 7 of the Cooperative Forestry Assistance Act  
16 of 1978 (16 U.S.C. 2103c) is amended—

17 (1) in subsection (c), by striking the last sen-  
18 tence;

19 (2) in subsection (i), by striking “subsection  
20 (b)” and inserting “this section”;

21 (3) in subsection (j)(1), by inserting “(other  
22 than by donation)” after “acquired”;

23 (4) in subsection (k)(2), by striking “the  
24 United States or its” and inserting “the United  
25 States, a State, or other entity, or their”; and

(5) in subsection (l), by adding at the end the following:

“(3) STATE AUTHORIZATION.—

“(A) DEFINITION OF STATE FORESTER.—

The term “State forester” has the meaning given the term in section 4(k).

“(B) IN GENERAL.—Notwithstanding subsection (c) and paragraph (2)(B), the Secretary shall, on request by a State, authorize the State to allow a qualified organization (as defined in section 170(h)(3) of the Internal Revenue Code of 1986) and that is organized for at least 1 of the purposes described in section 170(h)(4)(A) of that Code, using amounts granted to a State under this paragraph, to acquire 1 or more conservation easements to carry out the Forest Legacy Program in the State.

“(C) ELIGIBILITY.—To be eligible to acquire and manage conservation easements under this paragraph, a qualified organization described in subparagraph (B) shall, as determined by the Secretary, acting through the State forester, demonstrate the abilities necessary to acquire, monitor, and enforce interests in forest land consistent with the Forest Legacy

1           Program and the assessment of need for the  
2           State.

3           “(D) MONITORING AND ENFORCEMENT.—

4                   “(i) IN GENERAL.—A qualified orga-  
5                   nization that acquires a conservation ease-  
6                   ment under this paragraph shall be respon-  
7                   sible for monitoring and enforcing the  
8                   terms of the conservation easement and  
9                   any of the costs of the qualified organiza-  
10                  tion associated with such monitoring and  
11                  enforcement.

12                  “(ii) CONTINGENT RIGHTS.—If a  
13                  qualified organization that acquires a con-  
14                  servation easement under this paragraph  
15                  fails to enforce the terms of the conserva-  
16                  tion easement, as determined by the State,  
17                  the State or the Secretary shall have the  
18                  right to enforce the terms of the conserva-  
19                  tion easement under Federal or State law.

20                  “(iii) AMENDMENTS.—Any amend-  
21                  ments to a conservation easement that ma-  
22                  terially affect the terms of the conservation  
23                  easement shall be subject to approval by  
24                  the Secretary or the State, as appropriate.

25           “(E) TERMINATION OF EASEMENT.—

1 “(i) IN GENERAL.—Except as pro-  
2 vided in clause (ii), all right, title, and in-  
3 terest of a qualified organization described  
4 in subparagraph (B) in and to a conserva-  
5 tion easement shall terminate and vest in  
6 the State or a qualified designee if the  
7 State determines that—

8 “(I) the qualified organization  
9 fails to enforce the terms of the con-  
10 servation easement;

11 “(II) the conservation easement  
12 has been modified in a way that is in-  
13 consistent with the purposes of the  
14 Forest Legacy Program or the assess-  
15 ment of need for the State; or

16 “(III) the conservation easement  
17 has been conveyed to another person  
18 (other than to a qualified organiza-  
19 tion).

20 “(ii) CONVEYANCE TO ANOTHER  
21 QUALIFIED ORGANIZATION.—If the State  
22 makes a determination under clause (i),  
23 the State may convey or authorize the  
24 qualified organization to convey the con-

1                   servation easement to another qualified or-  
2                   ganization.

3                   “(F) IMPLEMENTATION.—The Secretary,  
4                   acting through the State forester, shall imple-  
5                   ment this paragraph in accordance with the as-  
6                   sessment of need for the State as approved by  
7                   the Secretary.”.

○