

109TH CONGRESS
1ST SESSION

S. 1530

To provide a Federal tax exemption for forest conservation bonds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. SMITH (for himself and Mrs. MURRAY) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide a Federal tax exemption for forest conservation bonds, 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 “Community Forestry
5 Conservation Act of 2005”.

6 **SEC. 2. FOREST CONSERVATION BONDS.**

7 (a) TAX-EXEMPT BOND FINANCING.—

8 (1) IN GENERAL.—For purposes of the Internal
9 Revenue Code of 1986, any qualified forest con-

1 servation bond shall be treated as an exempt facility
 2 bond under section 142 of such Code.

3 (2) QUALIFIED FOREST CONSERVATION
 4 BOND.—For purposes of this section, the term
 5 “qualified forest conservation bond” means any bond
 6 issued as part of an issue if—

7 (A) 95 percent or more of the net proceeds
 8 (as defined in section 150(a)(3) of such Code)
 9 of such issue are to be used for qualified project
 10 costs,

11 (B) such bond is issued for a qualified or-
 12 ganization, and

13 (C) such bond is issued before the date
 14 which is 36 months after the date of the enact-
 15 ment of this Act.

16 (3) LIMITATION ON AGGREGATE AMOUNT
 17 ISSUED.—

18 (A) IN GENERAL.—The maximum aggre-
 19 gate face amount of bonds which may be issued
 20 under this subsection shall not exceed
 21 \$10,000,000,000 for all projects (excluding re-
 22 funding bonds).

23 (B) ALLOCATION OF LIMITATION.—The
 24 limitation described in subparagraph (A) shall

1 be allocated by the Secretary of the Treasury
2 among qualified organizations as follows:

3 (i) 40 percent for qualified project
4 costs with respect to the cost of acquisition
5 by any qualified organization in the Pacific
6 Northwest region.

7 (ii) 25 percent for qualified project
8 costs with respect to the cost of acquisition
9 by any qualified organization in the West-
10 ern region.

11 (iii) 17.5 percent for qualified project
12 costs with respect to the cost of acquisition
13 by any qualified organization in the South-
14 east region.

15 (iv) 17.5 percent for qualified project
16 costs with respect to the cost of acquisition
17 by any qualified organization in the North-
18 east region.

19 (C) PROCEDURE FOR ISSUANCE.—The
20 amount of the limitation under each of the
21 clauses of subparagraph (B) shall be allocated
22 on a first-come, first-served basis.

23 (D) REGIONS.—For purposes of this para-
24 graph—

1 (i) PACIFIC NORTHWEST REGION.—

2 The term “Pacific Northwest region”
 3 means Region 6 as defined by the United
 4 States Forest Service of the Department of
 5 Agriculture under section 202.2 of title 36,
 6 Code of Federal Regulations.

7 (ii) WESTERN REGION.—The term
 8 “Western region” means Regions 1, 2, 3,
 9 4, 5, and 10 (as so defined).

10 (iii) SOUTHEAST REGION.—The term
 11 “Southeast region” means Region 8 (as so
 12 defined).

13 (iv) NORTHEAST REGION.—The term
 14 “Northeast region” means Region 9 (as so
 15 defined).

16 (4) QUALIFIED PROJECT COSTS.—For purposes
 17 of this subsection, the term “qualified project costs”
 18 means the sum of—

19 (A) the cost of acquisition by the qualified
 20 organization from an unrelated person of for-
 21 ests and forest land which at the time of acqui-
 22 sition or immediately thereafter are subject to
 23 a conservation restriction described in sub-
 24 section (c)(2),

1 (B) capitalized interest on the qualified
2 forest conservation bonds for the 3-year period
3 beginning on the date of issuance of such
4 bonds, and

5 (C) credit enhancement fees which con-
6 stitute qualified guarantee fees (within the
7 meaning of section 148 of such Code).

8 (5) SPECIAL RULES.—In applying the Internal
9 Revenue Code of 1986 to any qualified forest con-
10 servation bond, the following modifications shall
11 apply:

12 (A) Section 146 of such Code (relating to
13 volume cap) shall not apply.

14 (B) For purposes of section 147(b) of such
15 Code (relating to maturity may not exceed 120
16 percent of economic life), the land and standing
17 timber acquired with proceeds of qualified for-
18 est conservation bonds shall have an economic
19 life of 35 years.

20 (C) Subsections (c) and (d) of section 147
21 of such Code (relating to limitations on acquisi-
22 tion of land and existing property) shall not
23 apply.

1 (D) Section 57(a)(5) of such Code (relat-
2 ing to tax-exempt interest) shall not apply to
3 interest on qualified forest conservation bonds.

4 (6) TREATMENT OF CURRENT REFUNDING
5 BONDS.—Paragraphs (2)(C) and (3) shall not apply
6 to any bond (or series of bonds) issued to refund a
7 qualified forest conservation bond issued before the
8 date which is 36 months after the date of the enact-
9 ment of this Act, if—

10 (A) the average maturity date of the issue
11 of which the refunding bond is a part is not
12 later than the average maturity date of the
13 bonds to be refunded by such issue,

14 (B) the amount of the refunding bond does
15 not exceed the outstanding amount of the re-
16 funded bond, and

17 (C) the net proceeds of the refunding bond
18 are used to redeem the refunded bond not later
19 than 90 days after the date of the issuance of
20 the refunding bond.

21 For purposes of subparagraph (A), average maturity
22 shall be determined in accordance with section
23 147(b)(2)(A) of such Code.

1 (7) EFFECTIVE DATE.—This subsection shall
 2 apply to obligations issued on or after the date
 3 which is 180 days after the enactment of this Act.

4 (b) ITEMS FROM QUALIFIED HARVESTING ACTIVI-
 5 TIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

6 (1) IN GENERAL.—Income, gains, deductions,
 7 losses, or credits from a qualified harvesting activity
 8 conducted by a qualified organization shall not be
 9 subject to tax or taken into account under subtitle
 10 A of the Internal Revenue Code of 1986.

11 (2) LIMITATION.—The amount of income ex-
 12 cluded from gross income under paragraph (1) for
 13 any taxable year shall not exceed the amount used
 14 by the qualified organization to make debt service
 15 payments during such taxable year for qualified for-
 16 est conservation bonds.

17 (3) QUALIFIED HARVESTING ACTIVITY.—For
 18 purposes of paragraph (1)—

19 (A) IN GENERAL.—The term “qualified
 20 harvesting activity” means the sale, lease, or
 21 harvesting, of standing timber—

22 (i) on land owned by a qualified orga-
 23 nization which was acquired with proceeds
 24 of qualified forest conservation bonds, and

1 (ii) pursuant to a qualified conserva-
2 tion plan adopted by the qualified organi-
3 zation.

4 (B) EXCEPTIONS.—

5 (i) CESSATION AS QUALIFIED ORGANI-
6 ZATION.—The term “qualified harvesting
7 activity” shall not include any sale, lease,
8 or harvesting for any period during which
9 the organization ceases to qualify as a
10 qualified organization.

11 (ii) EXCEEDING LIMITS ON HAR-
12 VESTING.—The term “qualified harvesting
13 activity” shall not include any sale, lease,
14 or harvesting of standing timber on land
15 acquired with proceeds of qualified forest
16 conservation bonds to the extent that—

17 (I) the average annual area of
18 timber harvested from such land ex-
19 ceeds 2.5 percent of the total area of
20 such land or,

21 (II) the quantity of timber re-
22 moved from such land exceeds the
23 quantity which can be removed from
24 such land annually in perpetuity on a

1 sustained-yield basis with respect to
2 such land.

3 The limitations under subclauses (I) and
4 (II) shall not apply to post-fire restoration
5 and rehabilitation or sanitation harvesting
6 of timber stands which are substantially
7 damaged by fire, windthrow, or other ca-
8 tastrophes, or which are in imminent dan-
9 ger from insect or disease attack.

10 (4) TERMINATION.—This subsection shall not
11 apply to any qualified harvesting activity of a quali-
12 fied organization occurring after the date on which
13 there is no outstanding qualified forest conservation
14 bond with respect to such qualified organization or
15 any such bond ceases to be a tax-exempt bond.

16 (5) PARTIAL RECAPTURE OF BENEFITS IF HAR-
17 VESTING LIMIT EXCEEDED.—If, as of the date that
18 this subsection ceases to apply under paragraph (3),
19 the average annual area of timber harvested from
20 the land exceeds the requirement of paragraph
21 (3)(B)(ii)(I), the tax imposed by chapter 1 of the In-
22 ternal Revenue Code of 1986 shall be increased,
23 under rules prescribed by the Secretary of the
24 Treasury, by the sum of the tax benefits attributable
25 to such excess and interest at the underpayment

1 rate under section 6621 of such Code for the period
2 of the underpayment.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) QUALIFIED CONSERVATION PLAN.—The
5 term “qualified conservation plan” means a multiple
6 land use program or plan which—

7 (A) is designed and administered primarily
8 for the purposes of protecting and enhancing
9 wildlife and fish, timber, scenic attributes,
10 recreation, and soil and water quality of the
11 forest and forest land,

12 (B) mandates that conservation of forest
13 and forest land is the single-most significant
14 use of the forest and forest land, and

15 (C) requires that timber harvesting be con-
16 sistent with—

17 (i) restoring and maintaining ref-
18 erence conditions for the region’s ecotype,

19 (ii) restoring and maintaining a rep-
20 resentative sample of young, mid, and late
21 successional forest age classes,

22 (iii) maintaining or restoring the re-
23 sources’ ecological health for purposes of
24 preventing damage from fire, insect, or dis-
25 ease,

- 1 (iv) maintaining or enhancing wildlife
2 or fish habitat, or
3 (v) enhancing research opportunities
4 in sustainable renewable resource uses.

5 (2) CONSERVATION RESTRICTION.—The con-
6 servation restriction described in this paragraph is a
7 restriction which—

8 (A) is granted in perpetuity to an unre-
9 lated person which is described in section
10 170(h)(3) of such Code and which, in the case
11 of a nongovernmental unit, is organized and op-
12 erated for conservation purposes,

13 (B) meets the requirements of clause (ii)
14 or (iii)(II) of section 170(h)(4)(A) of such
15 Code,

16 (C) obligates the qualified organization to
17 pay the costs incurred by the holder of the con-
18 servation restriction in monitoring compliance
19 with such restriction, and

20 (D) requires an increasing level of con-
21 servation benefits to be provided whenever cir-
22 cumstances allow it.

23 (3) QUALIFIED ORGANIZATION.—The term
24 “qualified organization” means an organization—

1 (A) more than half of the value of the
2 property of which consists of forests and forest
3 land acquired with the proceeds from qualified
4 forest conservation bonds,

5 (B) which periodically conducts educational
6 programs designed to inform the public of envi-
7 ronmentally sensitive forestry management and
8 conservation techniques,

9 (C) which has at all times a board of direc-
10 tors—

11 (i) at least 20 percent of the members
12 of which represent the holders of the con-
13 servation restriction described in para-
14 graph (2),

15 (ii) at least 20 percent of the mem-
16 bers of which are public officials, and

17 (iii) not more than one-third of the
18 members of which are individuals who are
19 or were at any time within 5 years before
20 the beginning of a term of membership on
21 the board, an employee of, independent
22 contractor with respect to, officer of, direc-
23 tor of, or held a material financial interest
24 in, a commercial forest products enterprise

1 with which the qualified organization has a
 2 contractual or other financial arrangement,
 3 (D) the bylaws of which require at least
 4 two-thirds of the members of the board of direc-
 5 tors to vote affirmatively to approve the quali-
 6 fied conservation plan and any change thereto,
 7 and

8 (E) upon dissolution, is required to dedi-
 9 cate its assets to—

10 (i) an organization described in sec-
 11 tion 501(c)(3) of such Code which is orga-
 12 nized and operated for conservation pur-
 13 poses, or

14 (ii) a governmental unit described in
 15 section 170(c)(1) of such Code.

16 (4) UNRELATED PERSON.—The term “unre-
 17 lated person” means a person who is not a related
 18 person.

19 (5) RELATED PERSON.—A person shall be
 20 treated as related to another person if—

21 (A) such person bears a relationship to
 22 such other person described in section 267(b)
 23 (determined without regard to paragraph (9)
 24 thereof), or 707(b)(1), of such Code, deter-

1 mined by substituting “25 percent” for “50
2 percent” each place it appears therein, and

3 (B) in the case such other person is a non-
4 profit organization, if such person controls di-
5 rectly or indirectly more than 25 percent of the
6 governing body of such organization.

○