

109TH CONGRESS  
2D SESSION

# S. 2187

To amend the Internal Revenue Code of 1986 to provide economic incentives for the preservation of open space and conservation of natural resources, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2006

Mr. ISAKSON introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide economic incentives for the preservation of open space and conservation of natural resources, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Paul Coverdell Homestead Open Space Preservation and  
6 Conservation Act of 2006”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-  
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment  
2 to, or repeal of, a section or other provision, the reference  
3 shall be considered to be made to a section or other provi-  
4 sion of the Internal Revenue Code of 1986.

5 **SEC. 2. FINDINGS AND PURPOSE.**

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

7 (1) Tax and economic policies have for a sus-  
8 tained period of time inadvertently created financial  
9 difficulties for our Nation’s farming and ranching  
10 families that, among other negative impacts, has  
11 forced a significant number of them to liquidate  
12 their land holdings.

13 (2) This has particularly been the case in areas  
14 surrounding growing urban centers and resort des-  
15 tinations.

16 (3) This has fragmented many of our Nation’s  
17 large landscapes and disrupted many communities  
18 that historically derived their cultural and economic  
19 identities from the land.

20 (4) The impact of this has been to deprive  
21 many areas of open green space, which in turn has  
22 not only negatively affected our human settlements  
23 through the resulting sprawl, but has also dramati-  
24 cally reduced the amount of sustaining habitat for  
25 our natural communities of plants and animals.

1 (b) PURPOSE.—The purpose of this Act is to provide  
 2 an economic mechanism that will restore and conserve our  
 3 Nation’s natural estate in the form of forests, farms,  
 4 ranches, and wetlands while protecting our waterways and  
 5 our forests and open space in a manner that keeps them  
 6 subject to private ownership and supportive of our sur-  
 7 viving but threatened natural communities of plants and  
 8 animals.

9 **SEC. 3. QUALIFIED CONSERVATION CREDIT.**

10 (a) IN GENERAL.—Subpart B of part IV of sub-  
 11 chapter A of chapter 1 (relating to other credits) is  
 12 amended by adding at the end the following new section:

13 **“SEC. 30B. QUALIFIED CONSERVATION CREDIT.**

14 “(a) GENERAL RULE.—There shall be allowed as a  
 15 credit against the tax imposed by this chapter, in the case  
 16 of a qualified conservation organization, the amount of the  
 17 taxpayer’s qualified conservation expenditures for the tax-  
 18 able year.

19 “(b) QUALIFIED CONSERVATION EXPENDITURES.—  
 20 For purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified con-  
 22 servation expenditures’ means the sum of the quali-  
 23 fied conservation organization’s—

24 “(A) acquisition costs, plus

25 “(B) reserve funds.

1           “(2) ACQUISITION COSTS.—The term ‘acqui-  
2       sion costs’ means the sum of—

3           “(A) the lesser of—

4           “(i) the total of the amounts that a  
5       qualified conservation organization paid  
6       during the taxable year to acquire qualified  
7       real property interests exclusively for con-  
8       servation purposes, or

9           “(ii) the aggregate appraised value of  
10      the qualified real property interests re-  
11      ferred to in clause (i), plus

12      “(B) so much of the transaction costs rea-  
13      sonably incurred during the taxable year in con-  
14      nection with the acquisition of qualified real  
15      property interests as do not exceed 2 percent of  
16      the amount determined in subparagraph (A).

17      “(3) RESERVE FUNDS.—

18      “(A) IN GENERAL.—The term ‘reserve  
19      funds’ means amounts permanently set aside by  
20      a qualified conservation organization as an en-  
21      dowment to fund the future costs of enforcing  
22      and maintaining qualified real property inter-  
23      ests acquired by the qualified conservation orga-  
24      nization exclusively for conservation purposes.

1           “(B) ENDOWMENT.—The term ‘endow-  
 2           ment’ means a restricted fund held in a seg-  
 3           regated account, the income and realized appre-  
 4           ciation of which may be expended solely for the  
 5           purposes designated under this section, and  
 6           which may be invested solely in qualified invest-  
 7           ments (as defined in section 501(c)(21)(D)(ii)).

8           “(C) LIMITATION.—The amount of reserve  
 9           funds which may be taken into account under  
 10          paragraph (1)(B) for the taxable year shall not  
 11          exceed 8 percent of the acquisition costs for  
 12          that taxable year.

13          “(c) QUALIFIED CONSERVATION ORGANIZATION.—  
 14          For purposes of this section, the term ‘qualified conserva-  
 15          tion organization’ means, with respect to any taxable  
 16          year—

17               “(1) an organization which—

18                       “(A) is described in section 170(h)(3),

19                       “(B) has been in existence for at least 2  
 20                       calendar years immediately before the taxable  
 21                       year, and

22                       “(C) was organized to serve primarily con-  
 23                       servation purposes (as defined in section  
 24                       170(h)(4)),

1           “(2) a limited partnership, all the general part-  
 2           ners of which are organizations described in para-  
 3           graph (1), or

4           “(3) a limited liability company, all the man-  
 5           agers of which are organizations described in para-  
 6           graph (1),

7 with respect to which neither the seller of the qualified  
 8 real property interest nor any party related or subordinate  
 9 to the seller (within the meaning of section 672(c)) would  
 10 be a disqualified person (as defined in section 4946) if  
 11 the organization were a private foundation.

12       “(d) QUALIFIED REAL PROPERTY INTEREST.—For  
 13 purposes of this section, the term ‘qualified real property  
 14 interest’ has the meaning given such term by section  
 15 170(h)(2)(C).

16       “(e) EXCLUSIVELY FOR CONSERVATION PUR-  
 17 POSES.—For purposes of this section, the term ‘exclusively  
 18 for conservation purposes’ has the meaning given such  
 19 term by section 170(h)(5), except that an acquisition shall  
 20 not be treated as exclusively for conservation purposes un-  
 21 less the instrument conveying the qualified real property  
 22 interest expressly provides that the conservation purposes  
 23 may be enforced by both the attorney general of the State  
 24 in which the real property is located and the qualified con-  
 25 servation organization.

1       “(f) APPRAISED VALUE.—For purposes of this sec-  
 2 tion, the term ‘appraised value’ means the fair market  
 3 value as determined by a qualified appraisal (as defined  
 4 in section 155(a)(4) of the Deficit Reduction Act of 1984).

5       “(g) LIMITATION BASED ON AMOUNT OF TAX.—The  
 6 credit allowed under subsection (a) shall not exceed the  
 7 taxpayer’s liability for income tax (including unrelated  
 8 business income tax) for the taxable year.

9       “(h) LIMITATION ON AGGREGATE CREDIT ALLOW-  
 10 ABLE WITH RESPECT TO ACQUISITIONS OF QUALIFIED  
 11 REAL PROPERTY INTERESTS LOCATED IN A STATE.—

12               “(1) CREDIT MAY NOT EXCEED CREDIT  
 13 AMOUNT ALLOCATED TO ACQUISITION OF QUALIFIED  
 14 REAL PROPERTY INTEREST.—

15               “(A) IN GENERAL.—The amount of the  
 16 credit determined under subsection (a) for any  
 17 taxable year with respect to the acquisition of  
 18 any qualified real property interest shall not ex-  
 19 ceed the conservation credit dollar amount allo-  
 20 cated to such acquisition under this subsection.

21               “(B) TIME FOR MAKING ALLOCATION.—An  
 22 allocation shall be taken into account under  
 23 subparagraph (A) only if it is made not later  
 24 than the close of the calendar year in which the  
 25 qualified real property interest is acquired.

1           “(C) ALLOCATION REDUCES AGGREGATE  
 2 AMOUNT AVAILABLE TO AGENCY.—Any con-  
 3 servation credit dollar amount allocated to the  
 4 acquisition of any qualified real property inter-  
 5 est for any calendar year shall reduce the ag-  
 6 gregate conservation credit dollar amount of the  
 7 allocating conservation credit agency for such  
 8 calendar year.

9           “(2) CONSERVATION CREDIT DOLLAR AMOUNT  
 10 FOR AGENCIES.—

11           “(A) IN GENERAL.—The aggregate con-  
 12 servation credit dollar amount which a con-  
 13 servation credit agency may allocate for any  
 14 calendar year is the portion of the State con-  
 15 servation credit ceiling allocated under this  
 16 paragraph for such calendar year to such agen-  
 17 cy.

18           “(B) STATE CEILING INITIALLY ALLO-  
 19 CATED TO STATE CONSERVATION CREDIT AGEN-  
 20 CIES.—Except as provided in subparagraphs  
 21 (F) and (G), the State conservation credit ceil-  
 22 ing for each calendar year shall be allocated to  
 23 the conservation credit agency of such State. If  
 24 there is more than 1 conservation credit agency



of a State, all such agencies shall be treated as a single agency.

“(C) STATE CONSERVATION CREDIT CEILING.—The State conservation credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

“(i) the lesser of—

“(I) an amount equal to the aggregate annual credit multiplied by a fraction, the numerator of which is the amount of land located in such State that is either used for agricultural purposes or constitutes private forest land and the denominator of which is the amount of land in all States that is either used for agricultural purposes or constitutes private forest land, or

“(II) an amount equal to 4 percent of the aggregate annual credit for that year,

“(ii) the amount (if any) allocated under subparagraph (D) to such State by the Secretary,

1 “(iii) the unused State conservation  
 2 credit ceiling (if any) of such State for the  
 3 preceding calendar year,

4 “(iv) the amount of the State con-  
 5 servation credit ceiling returned in the cal-  
 6 endar year, plus

7 “(v) the amount (if any) allocated  
 8 under subparagraph (e) to such state by  
 9 the Secretary.

10 “For purposes of clause (i), the aggregate an-  
 11 nual credit is determined in accordance with the  
 12 following table:

<b>“For the calendar year ending:</b>	<b>The aggregate annual credit is:</b>
December 31, 2006 .....	\$4,000,000,000
December 31, 2007 .....	\$4,500,000,000
December 31, 2008 .....	\$5,000,000,000
December 31, 2009 .....	\$5,500,000,000
December 31, 2010 .....	\$6,000,000,000.

13 “For purposes of clause (iii), the unused State  
 14 conservation credit ceiling for any calendar year  
 15 is the excess (if any) of the sum of the amounts  
 16 described in clauses (i), (ii), and (iv) over the  
 17 aggregate conservation credit dollar amount al-  
 18 located for such year. For purposes of clause  
 19 (iv), the amount of State conservation credit  
 20 ceiling returned in the calendar year equals the  
 21 conservation credit dollar amount previously al-  
 22 located within the State to any proposed acqui-

sition of a qualified real property interest which is not acquired within the period required by the terms of the allocation or to any proposed acquisition of a qualified real property interest with respect to which an allocation is canceled by mutual consent of the conservation credit agency and the qualified conservation organization receiving the allocation.

“(D) UNUSED AGGREGATE ANNUAL CREDIT.—Any portion of the aggregate annual credit for a calendar year that is not allocated to a State’s conservation credit ceiling because of the 4 percent limitation under subparagraph (C)(i)(II) shall be allocated by the Secretary among the remaining States, subject to such 4 percent limitation, in proportion to their respective land used for agricultural purposes and private forest land.

“(E) UNUSED CONSERVATION CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

“(i) IN GENERAL.—The unused conservation credit carryover of a State for any calendar year shall be assigned to the

Secretary for allocation among qualified States for the succeeding calendar year.

“(ii) UNUSED CONSERVATION CREDIT CARRYOVER.—For purposes of this paragraph, the unused conservation credit carryover of a State for any calendar year is the excess (if any) of the unused State conservation credit ceiling for such year (as defined in subparagraph (C)(iii)) over the excess (if any) of—

“(I) the aggregate conservation credit dollar amount allocated for such year, over

“(II) the sum of the amounts described in clauses (i), (ii), and (iv) of subparagraph (C).

“(iii) FORMULA FOR ALLOCATION OF UNUSED CONSERVATION CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused conservation credit carryovers of all States for the pre-

ceding calendar year as such State's land  
 used for agricultural purposes and private  
 forest land for the calendar year bears to  
 the land used for agricultural purposes of  
 all qualified States for the calendar year.

“(iv) QUALIFIED STATE.—For pur-  
 poses of this subparagraph, the term  
 ‘qualified State’ means, with respect to a  
 calendar year, any State—

“(I) which has adopted a state-  
 wide conservation plan designed to  
 preserve the natural estate in the  
 form of forests, farms, ranches, and  
 wetlands located within the bound-  
 aries of that State,

“(II) which allocated its entire  
 State conservation credit ceiling for  
 the preceding calendar year, and

“(III) for which a request is  
 made (not later than May 1 of the  
 calendar year) to receive an allocation  
 under clause (iii).

“(F) SPECIAL RULE FOR STATES WITH  
 CONSTITUTIONAL HOME RULE CITIES.—For  
 purposes of this subsection—

1           “(i) IN GENERAL.—The aggregate  
2           conservation credit dollar amount for any  
3           constitutional home rule city for any cal-  
4           endar year shall be an amount which bears  
5           the same ratio to the State conservation  
6           credit ceiling for such calendar year as—

7                   “(I) the land used for agricul-  
8                   tural purposes and private forest land  
9                   within a 25-mile radius of such city,  
10                  bears to

11                   “(II) the land used for agricul-  
12                   tural purposes and private forest land  
13                   in the entire State.

14           “(ii) COORDINATION WITH OTHER AL-  
15           LOCATIONS.—In the case of any state  
16           which contains 1 or more constitutional  
17           home rule cities, for purposes of applying  
18           this paragraph with respect to conservation  
19           credit agencies in such State other than  
20           constitutional home rule cities, the State  
21           conservation credit ceiling for any calendar  
22           year shall be reduced by the aggregate con-  
23           servation credit dollar amounts determined  
24           for such year for all constitutional home  
25           rule cities in such State.

1 “(iii) CONSTITUTIONAL HOME RULE  
 2 CITY.—For purposes of this subparagraph,  
 3 the term ‘constitutional home rule city’ has  
 4 the meaning given such term by section  
 5 146(d)(3)(C).

6 “(G) STATE MAY PROVIDE FOR DIF-  
 7 FERENT ALLOCATION.—Rules similar to the  
 8 rules of section 146(e) (other than paragraph  
 9 (2)(B) thereof) shall apply for purposes of this  
 10 paragraph.

11 “(H) LAND USED FOR AGRICULTURAL  
 12 PURPOSES AND PRIVATE FOREST LAND.—For  
 13 purposes of this paragraph—

14 “(i) LAND USED FOR AGRICULTURAL  
 15 PURPOSES.—The term ‘land used for agri-  
 16 cultural purposes’ means the number of  
 17 acres classified as land in farms in the  
 18 1997 Census of Agriculture conducted by  
 19 the United States Department of Agri-  
 20 culture.

21 “(ii) PRIVATE FOREST LAND.—The  
 22 term ‘private forest land’ means the num-  
 23 ber of acres classified as private forest  
 24 land in the 1997 Forest Inventory and  
 25 Analysis conducted by the United States

1 Forest Service, excluding any acres so clas-  
2 sified therein that are also included as land  
3 in farms in the 1997 Census of Agriculture  
4 described in clause (i).

5 “(I) SECRETARY.—For purposes of this  
6 paragraph, the term ‘Secretary’ means the Sec-  
7 retary of Agriculture and the Secretary of the  
8 Interior, acting pursuant to jointly established  
9 rules and procedures.

10 “(3) SPECIAL RULES.—

11 “(A) INTERESTS MUST BE LOCATED WITH-  
12 IN JURISDICTION OF CREDIT AGENCY.—A con-  
13 servation credit agency may allocate its aggre-  
14 gate conservation credit dollar amount only  
15 with respect to acquisitions of qualified real  
16 property interests located in the jurisdiction of  
17 the governmental unit of which such agency is  
18 a part.

19 “(B) AGENCY ALLOCATIONS IN EXCESS OF  
20 LIMIT.—If the aggregate conservation credit  
21 dollar amounts allocated by a conservation cred-  
22 it agency for any calendar year exceed the por-  
23 tion of the State conservation credit ceiling allo-  
24 cated to such agency for such calendar year, the  
25 conservation credit dollar amounts so allocated



1           shall be reduced (to the extent of such excess)  
 2           for acquisitions of qualified real property inter-  
 3           ests in the reverse order in which the alloca-  
 4           tions of such amounts were made.

5           “(4) CONSERVATION CREDIT AGENCY.—For  
 6           purposes of this subsection, the term ‘conservation  
 7           credit agency’ means any agency authorized to carry  
 8           out this subsection.

9           “(i) REGULATIONS.—Except as provided in sub-  
 10          section (h)(2)(I), the Secretary shall prescribe such regu-  
 11          lations as may be necessary to carry out the purposes of  
 12          this section.

13          “(j) TERMINATION.—Subparagraph (A) of subsection  
 14          (h)(1) shall not apply to any amount allocated after De-  
 15          cember 31, 2010.”.

16          (b) RECOGNITION OF GAIN.—Section 1001 (relating  
 17          to determination of amount of and recognition of gain or  
 18          loss) is amended by adding at the end the following new  
 19          subsection:

20          “(f) QUALIFIED REAL PROPERTY INTERESTS.—Gain  
 21          shall be recognized on the sale of a qualified real property  
 22          interest (as defined in section 30B(d)) to a qualified con-  
 23          servation organization (as defined in section 30B(c)) ex-  
 24          clusively for conservation purposes (as defined in section  
 25          30B(e)) only to the extent that the amount realized on

1 the sale exceeds the taxpayer's adjusted basis in the entire  
 2 property to which the qualified real property interest re-  
 3 lates.”.

4 (c) BASIS ADJUSTMENT.—Section 1016 (relating to  
 5 adjustments to basis) is amended by redesignating sub-  
 6 section (e) as subsection (f) and by inserting after sub-  
 7 section (d) the following new subsection:

8 “(e) ADJUSTMENTS TO BASIS OF CERTAIN REAL  
 9 PROPERTY.—If the taxpayer has sold a qualified real  
 10 property interest in a transaction to which section 1001(f)  
 11 applies, then the taxpayer's basis in the remaining prop-  
 12 erty shall be reduced (but not below zero) by the amount  
 13 realized on the sale.”.

14 (d) CONFORMING AMENDMENTS.—

15 (1) PASSIVE LOSS RULES INAPPLICABLE.—Sec-  
 16 tion 469(d)(2)(A)(i) is amended to read as follows:

17 “(i) subpart D (other than section  
 18 30B) of part IV of subchapter A, or”.

19 (2) UNRELATED BUSINESS INCOME TAX.—Sec-  
 20 tion 511(a)(1) is amended by striking “section 11.”  
 21 and inserting “section 11, less any credits to which  
 22 the organization is entitled under section 30B.”.

23 (3) DENIAL OF CHARITABLE CONTRIBUTION  
 24 DEDUCTION.—Section 170(e) is amended by adding  
 25 at the end the following new paragraph:

1           “(7) SPECIAL RULE FOR CONTRIBUTIONS OF  
 2 INTERESTS IN QUALIFIED CONSERVATION ORGANIZA-  
 3 TIONS.—No deduction shall be allowed for the con-  
 4 tribution of an interest in a qualified conservation  
 5 organization (as defined in section 30B(c)) that has  
 6 acquired 1 or more qualified real property interests  
 7 in transactions to which section 30B applies.”.

8           (4) CLASSIFICATION AS PARTNERSHIP.—Sec-  
 9 tion 761(a) is amended by adding at the end the fol-  
 10 lowing new sentence: “Such term also includes an  
 11 organization described in either section 30B(c)(2) or  
 12 section 30B(c)(3).”.

13           (5) CLERICAL AMENDMENT.—The table of sec-  
 14 tions for subpart B of part IV of subchapter A of  
 15 chapter 1 is amended by adding at the end the fol-  
 16 lowing new item:

“Sec. 30B. Qualified conservation credit.”.

17           (e) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to taxable years beginning after  
 19 December 31, 2005.

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