

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 941

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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2005

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.

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 “Suburban and Commu-  
5       nity Forestry and Open Space Program Act of 2005”.

1 **SEC. 2. SUBURBAN AND COMMUNITY FORESTRY AND OPEN**  
 2 **SPACE PROGRAM; FOREST LEGACY PRO-**  
 3 **GRAM.**

4 (a) SUBURBAN AND COMMUNITY FORESTRY AND  
 5 OPEN SPACE PROGRAM.—The Cooperative Forestry As-  
 6 sistance Act of 1978 (16 U.S.C. 2101 et seq.) is amended  
 7 by adding at the end the following:

8 **“SEC. 21. SUBURBAN AND COMMUNITY FORESTRY AND**  
 9 **OPEN SPACE PROGRAM.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) COMMITTEE.—The term ‘Committee’  
 12 means a State Forest Stewardship Coordinating  
 13 Committee established under section 19(b).

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

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

21 “(B) the State forester, in consultation  
 22 with the Committee, determines—

23 “(i) has the abilities necessary to ac-  
 24 quire and manage interests in real prop-  
 25 erty; and

1                   “(ii) has the resources necessary to  
2                   monitor and enforce any terms applicable  
3                   to the eligible project.

4                   “(3) ELIGIBLE PROJECT.—The term ‘eligible  
5                   project’ means a fee purchase, easement, or donation  
6                   of land to conserve private forest land identified for  
7                   conservation under subsection (c)(1)(A)(ii)(I).

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

12                  “(5) NONPROFIT ORGANIZATION.—The term  
13                  ‘nonprofit organization’ means any organization that  
14                  is—

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

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

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

21                         “(A) capable of producing commercial for-  
22                         est products; and

23                         “(B) owned by—

24                                 “(i) a private entity; or

25                                 “(ii) an Indian tribe.

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

4           “(8) SECRETARY.—The term ‘Secretary’ means  
5 the Secretary of Agriculture, acting through the  
6 Chief of the Forest Service.

7           “(b) ESTABLISHMENT.—

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

12           “(2) PURPOSE.—The purpose of the program is  
13 to provide assistance to eligible entities to carry out  
14 eligible projects in States in which less than 25 per-  
15 cent of the land is owned by the United States to—

16           “(A) conserve private forest land and  
17 maintain working forests in areas threatened by  
18 significant suburban sprawl or by conversion to  
19 nonforest uses;

20           “(B) provide communities a means by  
21 which to address significant suburban sprawl;  
22 and

23           “(C) support primary and secondary value-  
24 added forest products industries and employ-  
25 ment in areas threatened by—

1 “(i) significant suburban sprawl; or

2 “(ii) conversion to nonforest uses.

3 “(c) GRANT PROGRAM.—

4 “(1) IDENTIFICATION OF ELIGIBLE PRIVATE  
5 FOREST LAND.—

6 “(A) CRITERIA.—

7 “(i) NATIONAL CRITERIA.—The Sec-  
8 retary shall establish national eligibility  
9 criteria for the identification of private for-  
10 est land that may be conserved under this  
11 section.

12 “(ii) STATE CRITERIA.—The State  
13 forester, in consultation with the Com-  
14 mittee, shall, based on the criteria estab-  
15 lished under clause (i), and subject to the  
16 approval of the Secretary, establish criteria  
17 for—

18 “(I) the identification, subject to  
19 subparagraph (B), of private forest  
20 land in each State that may be con-  
21 served under this section; and

22 “(II) the identification of eligible  
23 entities.

24 “(B) CONDITIONS FOR ELIGIBLE PRIVATE  
25 FOREST LAND.—Private forest land identified

1 for conservation under subparagraph (A)(ii)(I)  
2 shall be land that—

3 “(i) is located in a State in which less  
4 than 25 percent of the land is owned by  
5 the United States; and

6 “(ii) as determined by the State for-  
7 ester, in consultation with the Committee  
8 and subject to the approval of the Sec-  
9 retary—

10 “(I) is located in an area that is  
11 affected, or threatened to be affected,  
12 by significant suburban sprawl, taking  
13 into account housing needs in the  
14 area; and

15 “(II) is threatened by present or  
16 future conversion to nonforest use.

17 “(2) GRANTS.—

18 “(A) ELIGIBLE PROJECTS.—

19 “(i) IN GENERAL.—In carrying out  
20 this section, the Secretary shall award  
21 competitive grants to eligible entities to  
22 carry out eligible projects.

23 “(ii) PUBLIC ACCESS.—Eligible enti-  
24 ties are encouraged to provide public ac-  
25 cess to land on which an eligible project is

1 carried out, consistent with State law and  
 2 preexisting access agreements.

3 “(B) APPLICATION; STEWARDSHIP  
 4 PLAN.—An eligible entity that seeks to receive  
 5 a grant under this section shall submit to the  
 6 State forester—

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

14 “(ii) a stewardship plan that de-  
 15 scribes—

16 “(I) the manner in which any  
 17 private forest land to be conserved  
 18 using funds from the grant will be  
 19 managed in accordance with this sec-  
 20 tion;

21 “(II) the manner in which the  
 22 stewardship plan will be implemented;  
 23 and

24 “(III) the public benefits, includ-  
 25 ing economic and noneconomic bene-

1 fits, to be achieved from implementa-  
 2 tion of the stewardship plan.

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

6 “(i) assess the need for preserving  
 7 working suburban forest land and open  
 8 space and containing suburban sprawl in  
 9 the State, taking into account the housing  
 10 needs of the area in which the eligible  
 11 project is to be carried out; and

12 “(ii) submit to the Secretary—

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

15 “(II) the assessment of need.

16 “(D) APPROVAL OR DISAPPROVAL.—

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

23 “(I) review the application; and

24 “(II)(aa) award a grant to the  
 25 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;

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

9           “(ff) primary and secondary  
10          value-added forest products in-  
11          dustries and employment.

12          “(3) COST SHARING.—

13               “(A) IN GENERAL.—The amount of a  
14               grant awarded under this section to carry out  
15               an eligible project shall not exceed 50 percent  
16               of the total cost of the eligible project.

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

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

6           “(d) USE OF GRANT FUNDS FOR PURCHASES OF  
7           LAND OR EASEMENTS.—

8           “(1) PURCHASES.—

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

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

22           “(2) TITLE.—Title to private forest land or an  
23           interest in private forest land purchased under para-  
24           graph (1) may be held, as determined appropriate by  
25           the Secretary, in consultation with the State, by—

1 “(A) a State;

2 “(B) a unit of local government; or

3 “(C) a nonprofit organization.

4 “(3) TERMINATION OF EASEMENT.—

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

11 “(i) the unit of local government or  
12 nonprofit organization is unable or unwill-  
13 ing to enforce the terms of the conserva-  
14 tion easement; or

15 “(ii) the conservation easement has  
16 been modified in a way that is inconsistent  
17 with the purposes of the program.

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

1       “(e) ADMINISTRATIVE COSTS.—The State, on ap-  
2       proval of the Secretary and subject to any regulations pro-  
3       mulgated by the Secretary, may use amounts made avail-  
4       able under subsection (g) to pay the administrative costs  
5       of the State relating to the program.

6       “(f) REPORT.—The Secretary shall submit to Con-  
7       gress a report on the eligible projects carried out under  
8       this section in accordance with section 8(c) of the Forest  
9       and Rangeland Renewable Resources Planning Act of  
10      1974 (16 U.S.C. 1606(c)).

11      “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
12      are authorized to be appropriated to carry out this sec-  
13      tion—

14               “(1) \$50,000,000 for fiscal year 2006; and

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

17      (b) FOREST LEGACY PROGRAM.—Section 7 of the  
18      Cooperative Forestry Assistance Act of 1978 (16 U.S.C.  
19      2103c) is amended—

20               (1) in subsection (c), by striking the last sen-  
21      tence;

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

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

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

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

6 “(4) STATE AUTHORIZATION.—

7 “(A) DEFINITION OF STATE FORESTER.—

8 The term ‘State forester’ has the meaning given  
9 the term in section 4(k).

10 “(B) IN GENERAL.—Notwithstanding sub-  
11 section (c) and paragraph (2)(B), the Secretary  
12 shall, on request by a State, authorize the State  
13 to allow a qualified organization (as defined in  
14 section 170(h)(3) of the Internal Revenue Code  
15 of 1986) and that is organized for at least 1 of  
16 the purposes described in section 170(h)(4)(A)  
17 of that Code, using amounts granted to a State  
18 under this paragraph, to acquire 1 or more con-  
19 servation easements to carry out the Forest  
20 Legacy Program in the State.

21 “(C) ELIGIBILITY.—To be eligible to ac-  
22 quire and manage conservation easements  
23 under this paragraph, a qualified organization  
24 described in subparagraph (B) shall, as deter-  
25 mined by the Secretary, acting through the

1 State forester, demonstrate the abilities nec-  
2 essary to acquire, monitor, and enforce interests  
3 in forest land consistent with the Forest Legacy  
4 Program and the assessment of need for the  
5 State.

6 “(D) MONITORING AND ENFORCEMENT.—

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

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

23 “(iii) AMENDMENTS.—Any amend-  
24 ments to a conservation easement that ma-  
25 terially affect the terms of the conservation

1 easement shall be subject to approval by  
2 the Secretary or the State, as appropriate.

3 “(E) TERMINATION OF EASEMENT.—

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

11 “(I) the qualified organization  
12 fails to enforce the terms of the con-  
13 servation easement;

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

19 “(III) the conservation easement  
20 has been conveyed to another person  
21 (other than to a qualified organiza-  
22 tion).

23 “(ii) CONVEYANCE TO ANOTHER  
24 QUALIFIED ORGANIZATION.—If the State  
25 makes a determination under clause (i),

1           the State may convey or authorize the  
2           qualified organization to convey the con-  
3           servation easement to another qualified or-  
4           ganization.

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

○