

110TH CONGRESS  
1ST SESSION

# S. 50

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 4, 2007

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. 30D. 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

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

3 “(C) STATE CONSERVATION CREDIT CEIL-  
4 ING.—The State conservation credit ceiling ap-  
5 plicable to any State for any calendar year shall  
6 be an amount equal to the sum of—

7 “(i) the lesser of—

8 “(I) an amount equal to the ag-  
9 gregate annual credit multiplied by a  
10 fraction, the numerator of which is  
11 the amount of land located in such  
12 State that is either used for agricul-  
13 tural purposes or constitutes private  
14 forest land and the denominator of  
15 which is the amount of land in all  
16 States that is either used for agricul-  
17 tural purposes or constitutes private  
18 forest land, or

19 “(II) an amount equal to 4 per-  
20 cent of the aggregate annual credit  
21 for that year,

22 “(ii) the amount (if any) allocated  
23 under subparagraph (F) to such State by  
24 the Secretary,

1                   “(iii) the amount of the State con-  
 2                   servation credit ceiling returned in the cal-  
 3                   endar year, plus

4                   “(iv) the amount (if any) allocated  
 5                   under subparagraph (G) to such State by  
 6                   the Secretary.

7                   “(D) AGGREGATE ANNUAL CREDIT.—For  
 8                   purposes of subparagraph (C)(i), the aggregate  
 9                   annual credit is determined in accordance with  
 10                  the 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

11                  “(E) STATE CONSERVATION CREDIT CEIL-  
 12                  ING RETURNED.—For purposes of clause (iii),  
 13                  the amount of State conservation credit ceiling  
 14                  returned in the calendar year equals the con-  
 15                  servation credit dollar amount previously allo-  
 16                  cated within the State to any proposed acquisi-  
 17                  tion of a qualified real property interest which  
 18                  is not acquired within the period required by  
 19                  the terms of the allocation or to any proposed  
 20                  acquisition of a qualified real property interest  
 21                  with respect to which an allocation is canceled  
 22                  by mutual consent of the conservation credit

1 agency and the qualified conservation organiza-  
2 tion receiving the allocation.

3 “(F) UNUSED AGGREGATE ANNUAL CRED-  
4 IT.—Any portion of the aggregate annual credit  
5 for a calendar year that is not allocated to a  
6 State’s conservation credit ceiling because of  
7 the 4 percent limitation under subparagraph  
8 (C)(i)(II) shall be allocated by the Secretary  
9 among the remaining States, subject to such 4  
10 percent limitation, in proportion to their respec-  
11 tive land used for agricultural purposes and pri-  
12 vate forest land.

13 “(G) UNUSED CONSERVATION CREDIT  
14 CARRYOVERS ALLOCATED AMONG CERTAIN  
15 STATES.—

16 “(i) IN GENERAL.—The unused con-  
17 servation credit carryover of a State for  
18 any calendar year shall be assigned to the  
19 Secretary for allocation among qualified  
20 States for the succeeding calendar year.

21 “(ii) UNUSED CONSERVATION CREDIT  
22 CARRYOVER.—For purposes of this para-  
23 graph, the unused conservation credit car-  
24 ryover of a State for any calendar year is  
25 the excess (if any) of the State conserva-

1           tion credit ceiling for such year (as defined  
2           in subparagraph (C)) over the aggregate  
3           conservation credit dollar amount allocated  
4           by such State for such year.

5           “(iii) FORMULA FOR ALLOCATION OF  
6           UNUSED           CONSERVATION           CREDIT  
7           CARRYOVERS           AMONG           QUALIFIED  
8           STATES.—The Secretary shall determine  
9           the formula for allocating the unused con-  
10          servation credit carryovers among the  
11          qualified States for a calendar year. In the  
12          determination of such formula, the Sec-  
13          retary shall assure that each qualified  
14          State in a calendar year shall receive some  
15          allocated amount of the unused conserva-  
16          tion credit carryover for that year but that  
17          such carryovers shall otherwise be allocated  
18          among the qualified States in a manner  
19          that best realizes the purpose of this sec-  
20          tion.

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

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

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

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

14           “(H) SPECIAL RULE FOR STATES WITH  
15           CONSTITUTIONAL HOME RULE CITIES.—For  
16           purposes of this subsection—

17           “(i) IN GENERAL.—The aggregate  
18           conservation credit dollar amount for any  
19           constitutional home rule city for any cal-  
20           endar year shall be an amount which bears  
21           the same ratio to the State conservation  
22           credit ceiling for such calendar year as—

23           “(I) the land used for agricul-  
24           tural purposes and private forest land

1           within a 25-mile radius of such city,  
2           bears to

3                   “(II) the land used for agricul-  
4                   tural purposes and private forest land  
5                   in the entire State.

6                   “(ii) COORDINATION WITH OTHER AL-  
7                   LOCATIONS.—In the case of any state  
8                   which contains 1 or more constitutional  
9                   home rule cities, for purposes of applying  
10                  this paragraph with respect to conservation  
11                  credit agencies in such State other than  
12                  constitutional home rule cities, the State  
13                  conservation credit ceiling for any calendar  
14                  year shall be reduced by the aggregate con-  
15                  servation credit dollar amounts determined  
16                  for such year for all constitutional home  
17                  rule cities in such State.

18                  “(iii) CONSTITUTIONAL HOME RULE  
19                  CITY.—For purposes of this subparagraph,  
20                  the term ‘constitutional home rule city’ has  
21                  the meaning given such term by section  
22                  146(d)(3)(C).

23                  “(I) STATE MAY PROVIDE FOR DIFFERENT  
24                  ALLOCATION.—Rules similar to the rules of sec-

1           tion 146(e) (other than paragraph (2)(B) there-  
2           of) shall apply for purposes of this paragraph.

3           “(J) LAND USED FOR AGRICULTURAL PUR-  
4           POSES AND PRIVATE FOREST LAND.—For pur-  
5           poses of this paragraph—

6                   “(i) LAND USED FOR AGRICULTURAL  
7                   PURPOSES.—The term ‘land used for agri-  
8                   cultural purposes’ means the number of  
9                   acres classified as land in farms in the  
10                  1997 Census of Agriculture conducted by  
11                  the United States Department of Agri-  
12                  culture.

13                   “(ii) PRIVATE FOREST LAND.—The  
14                   term ‘private forest land’ means the num-  
15                   ber of acres classified as private forest  
16                   land in the 1997 Forest Inventory and  
17                   Analysis conducted by the United States  
18                   Forest Service, excluding any acres so clas-  
19                   sified therein that are also included as land  
20                   in farms in the 1997 Census of Agriculture  
21                   described in clause (i).

22                   “(K) SECRETARY.—For purposes of this  
23                   paragraph, the term ‘Secretary’ means the Sec-  
24                   retary of Agriculture and the Secretary of the

1 Interior, acting pursuant to jointly established  
2 rules and procedures.

3 “(3) SPECIAL RULES.—

4 “(A) INTERESTS MUST BE LOCATED WITH-  
5 IN JURISDICTION OF CREDIT AGENCY.—A con-  
6 servation credit agency may allocate its aggre-  
7 gate conservation credit dollar amount only  
8 with respect to acquisitions of qualified real  
9 property interests located in the jurisdiction of  
10 the governmental unit of which such agency is  
11 a part.

12 “(B) AGENCY ALLOCATIONS IN EXCESS OF  
13 LIMIT.—If the aggregate conservation credit  
14 dollar amounts allocated by a conservation cred-  
15 it agency for any calendar year exceed the por-  
16 tion of the State conservation credit ceiling allo-  
17 cated to such agency for such calendar year, the  
18 conservation credit dollar amounts so allocated  
19 shall be reduced (to the extent of such excess)  
20 for acquisitions of qualified real property inter-  
21 ests in the reverse order in which the alloca-  
22 tions of such amounts were made.

23 “(4) CONSERVATION CREDIT AGENCY.—For  
24 purposes of this subsection, the term ‘conservation

1 credit agency’ means any agency authorized to carry  
2 out this subsection.

3 “(i) REGULATIONS.—Except as provided in sub-  
4 section (h)(2)(K), the Secretary shall prescribe such regu-  
5 lations as may be necessary to carry out the purposes of  
6 this section.

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

10 (b) RECOGNITION OF GAIN.—Section 1001 (relating  
11 to determination of amount of and recognition of gain or  
12 loss) is amended by adding at the end the following new  
13 subsection:

14 “(f) QUALIFIED REAL PROPERTY INTERESTS.—Gain  
15 shall be recognized on the sale of a qualified real property  
16 interest (as defined in section 30D(d)) to a qualified con-  
17 servation organization (as defined in section 30D(c)) ex-  
18 clusively for conservation purposes (as defined in section  
19 30D(e)) only to the extent that the amount realized on  
20 the sale exceeds the taxpayer’s adjusted basis in the entire  
21 property to which the qualified real property interest re-  
22 lates.”.

23 (c) BASIS ADJUSTMENT.—Section 1016 (relating to  
24 adjustments to basis) is amended by redesignating sub-

1 section (e) as subsection (f) and by inserting after sub-  
2 section (d) the following new subsection:

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

9 (d) CONFORMING AMENDMENTS.—

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

12 “(i) subpart D (other than section  
13 30D) of part IV of subchapter A, or”.

14 (2) UNRELATED BUSINESS INCOME TAX.—Sec-  
15 tion 511(a)(1) is amended by striking “section 11.”  
16 and inserting “section 11, less any credits to which  
17 the organization is entitled under section 30D.”.

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

21 “(7) SPECIAL RULE FOR CONTRIBUTIONS OF  
22 INTERESTS IN QUALIFIED CONSERVATION ORGANIZA-  
23 TIONS.—No deduction shall be allowed for the con-  
24 tribution of an interest in a qualified conservation  
25 organization (as defined in section 30D(e)) that has

1       acquired 1 or more qualified real property interests  
2       in transactions to which section 30D applies.”.

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

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

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

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

○