

104TH CONGRESS
1ST SESSION

S. 1365

To provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1995

Mr. KEMPTHORNE (for himself, Mr. WARNER, Mr. FAIRCLOTH, Mr. INHOFE, Mr. THOMAS, Mr. McCONNELL, Mr. CRAIG, Mr. BENNETT, Mr. BURNS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, 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 “Endangered Species
5 Habitat Protection Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Senate finds and declares the following:

1 **“SEC. 23. CREDIT FOR AGREEMENT TO MANAGE LAND TO**
2 **PRESERVE ENDANGERED SPECIES.**

3 “(a) ALLOWANCE OF CREDIT.—There shall be al-
4 lowed as a credit against the tax imposed by this chapter
5 for the taxable year an amount equal to the lesser of—

6 “(1) the applicable acreage rate of the qualified
7 acreage, or

8 “(2) \$50,000.

9 “(b) APPLICABLE ACREAGE RATE.—For purposes of
10 subsection (a), the applicable acreage rate is the rate es-
11 tablished by the Secretary of the Interior for the taxable
12 year utilizing rates comparable to rental payments under
13 the conservation reserve program under section 1234 of
14 the Food Security Act of 1985 (16 U.S.C. 3834).

15 “(c) QUALIFIED ACREAGE.—For purposes of this
16 section, the term ‘qualified acreage’ means any acreage—

17 “(1) which is subject to an endangered species
18 conservation agreement under the Endangered Spe-
19 cies Act (16 U.S.C. 1531 et seq.) and accepted into
20 the expanded conservation reserve program pursuant
21 to section 1231(d)(2) of the Food Security Act of
22 1985 (16 U.S.C. 3831(d)(2)),

23 “(2) which is owned by one or more individuals
24 directly or indirectly through a partnership or S cor-
25 poration that is held entirely by individuals, and

1 “(3) subject to a perpetual restriction that is
2 valued pursuant to section 170(h)(7).

3 “(d) CREDIT RECAPTURE.—If, during the period of
4 the endangered species conservation agreement, the tax-
5 payer transfers the qualified acreage without also transfer-
6 ring the taxpayer’s obligations under the expanded con-
7 servation reserve program under subchapter B of chapter
8 1 of subtitle D of the Food Security Act of 1985 (16
9 U.S.C. 3831 et seq.) and the endangered species conserva-
10 tion agreement, then the taxpayer’s tax under this chapter
11 for the taxable year shall be increased by the amount of
12 the credit received under this section during all prior years
13 by such taxpayer, plus interest at the overpayment rate
14 established under section 6621 on such amount for each
15 prior taxable year for the period beginning on the due date
16 for filing the return for the prior taxable year involved.
17 No deduction shall be allowed under this chapter for inter-
18 est described in the preceding sentence, and any increase
19 in tax under the preceding sentence shall not be treated
20 as a tax imposed by this chapter for purposes of determin-
21 ing the amount of any credit under subpart A, B, D, or
22 G of this part.

23 “(e) JOINT OWNERS.—For purposes of this section,
24 the amount of credit under this section that any joint
25 owner is entitled to constitutes the total credit allowable

1 under this section with respect to the qualified acreage
2 multiplied by the individual's percentage ownership in the
3 qualified acreage. Each joint owner shall include the
4 names and taxpayer identification numbers of all other
5 joint owners in the property.

6 “(f) REGULATORY AUTHORITY.—

7 “(1) TREASURY DEPARTMENT.—The Secretary
8 shall promulgate regulations to ensure that a tax-
9 payer cannot subdivide property to determine such
10 taxpayer's qualified acreage unless all of the acreage
11 such taxpayer owns within a significant region is
12 submitted to the expanded conservation reserve pro-
13 gram, whether or not such acreage is eligible for a
14 credit under this section.

15 “(2) SECRETARY OF THE INTERIOR.—As nec-
16 essary, the Secretary of the Interior shall determine
17 the applicable acreage rate for regions within the
18 United States based on rates comparable to those
19 under the expanded conservation reserve program.
20 Once a rate is prescribed under an endangered spe-
21 cies conservation agreement, however, such rate
22 shall remain in effect for the duration of that agree-
23 ment.”

1 (b) CONFORMING AMENDMENTS.—Subchapter B of
2 chapter 1 of subtitle D of the Food Security Act of 1985
3 (16 U.S.C. 3831 et seq.) is amended—

4 (1) in section 1231(b)—

5 (A) by striking the period at the end and
6 inserting “; or”; and

7 (B) by adding at the end the following new
8 paragraph:

9 “(5) lands with respect to which the owner or
10 operator and the Secretary of the Interior or the
11 Secretary of Commerce have entered into an endan-
12 gered species conservation agreement.”;

13 (2) in section 1231(d), by striking “(d)” and
14 inserting “(d)(1)” and by adding at the end the fol-
15 lowing new paragraph:

16 “(2) The Secretary of the Interior and the Secretary
17 of Commerce shall enter into endangered species conserva-
18 tion agreements under this section to enroll acreage, in
19 addition to the 38,000,000 acres authorized by paragraph
20 (1), into the expanded conservation reserve, for which no
21 payment is due under section 3834, totaling 5,000,000
22 acres during calendar years 1996 through 2001. In enroll-
23 ing such acres, the Secretary of the Interior and the Sec-
24 retary of Commerce shall reserve 1,000,000 acres for en-
25 rollment under this section in calendar year 1996.”;

1 (3) in section 1232, by adding at the end the
2 following new subsection:

3 “(f) This section shall not apply to owners and opera-
4 tors subject to endangered species conservation agree-
5 ments.”;

6 (4) in section 1234, by adding at the end the
7 following new subsection:

8 “(i) This section shall not apply to owners and opera-
9 tors subject to endangered species conservation agree-
10 ments.”; and

11 (5) by inserting after section 1234 the following
12 new section:

13 **“SEC. 1234A. NO PAYMENTS TO PROPERTIES FOR WHICH AN**
14 **INCOME TAX CREDIT OR DEDUCTION IS**
15 **TAKEN.**

16 “The Secretary shall insure that no payment be made
17 under this subchapter to any owner if that owner has indi-
18 cated an intention to claim an income tax credit (under
19 section 23 of the Internal Revenue Code of 1986) for par-
20 ticipation in this program, or an income tax deduction
21 (under section 170(h)(4)(A)(iii) of such Code).”

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for subpart A of part IV of subchapter A of chapter 1
24 of the Internal Revenue Code of 1986 is amended by in-

1 serting after the item relating to section 22 the following
 2 new item:

“Sec. 23. Credit for agreement to manage land to preserve en-
 dangered species.”

3 (d) EFFECTIVE DATES.—

4 (1) CREDIT.—The amendments made by sub-
 5 sections (a) and (c) shall apply to taxable years be-
 6 ginning after December 31, 1995.

7 (2) CONFORMING AMENDMENTS.—The amend-
 8 ments made by subsection (b) shall take effect on
 9 January 1, 1996.

10 **SEC. 4. ENHANCED DEDUCTION FOR THE DONATION OF A**
 11 **CONSERVATION EASEMENT.**

12 (a) IN GENERAL.—Subparagraph (A) of section
 13 170(h)(4) of the Internal Revenue Code of 1986 (defining
 14 conservation purpose) is amended by striking “or” at the
 15 end of clause (iii), by striking the period at the end of
 16 clause (iv) and inserting “, or”, and by adding at the end
 17 the following new clause:

18 “(v) the protection of a species des-
 19 ignated endangered by the Secretary of the
 20 Interior or the Secretary of Commerce.”

21 (b) ENHANCED VALUATION.—Section 170(h) of the
 22 Internal Revenue Code of 1986 (defining qualified con-
 23 servation contribution) is amended by adding at the end
 24 the following new paragraph:

1 “(7) ENHANCED VALUATION OF PROPERTY
2 WITH ENDANGERED SPECIES.—For purposes of this
3 section, the valuation of a perpetual restriction
4 granted to the Secretary of the Interior or the Sec-
5 retary of Commerce or to a State agency implement-
6 ing an endangered species program for the purpose
7 described in paragraph (4)(A)(iii) shall be made by
8 comparing the value of the property after the re-
9 striction is granted with the value of that same
10 property without either the encumbrance of such re-
11 striction or any of the restrictions placed on such
12 property by the Endangered Species Act of 1973 (16
13 U.S.C. 1531 et seq.).”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to contributions made after the
16 date of the enactment of this Act.

17 **SEC. 5. ADDITIONAL DEDUCTION FOR CERTAIN STATE AND**
18 **LOCAL REAL PROPERTY TAXES IMPOSED**
19 **WITH RESPECT TO PROPERTY SUBJECT TO**
20 **AN ENDANGERED SPECIES CONSERVATION**
21 **AGREEMENT.**

22 (a) IN GENERAL.—Section 164 of the Internal Reve-
23 nue Code of 1986 (relating to deductions for taxes) is
24 amended by redesignating subsection (g) as subsection (h)

1 and by inserting after subsection (f) the following new
2 subsection:

3 “(g) ADDITIONAL DEDUCTION FOR CERTAIN STATE
4 AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RE-
5 SPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPE-
6 CIES CONSERVATION AGREEMENT.—

7 “(1) GENERAL RULE.—Except as provided in
8 paragraph (3), in the case of property—

9 “(A) which, on the last day of the taxable
10 year, is described in section 23(c)(1), and

11 “(B) with respect to which no recapture
12 event described in section 23(d) has occurred,

13 a deduction in the amount determined under para-
14 graph (2) shall be allowed for all State and local real
15 property taxes paid or accrued with respect to such
16 property during such year. The deduction allowed by
17 this subsection shall be in addition to any other de-
18 duction allowed by this section.

19 “(2) AMOUNT OF ADDITIONAL DEDUCTION.—

20 The deduction allowed by this subsection shall equal
21 25 percent of the amount of State and local real
22 property taxes that are otherwise deductible under
23 this section without regard to this subsection.

1 “(3) DEDUCTION NOT ALLOWED.—No deduc-
2 tion shall be allowed under this subsection for taxes
3 imposed upon real property—

4 “(A) with respect to which a credit under
5 section 23 is allowable, or

6 “(B) subject to a perpetual restriction that
7 is valued pursuant to section 170(h)(7).”

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1995.

11 **SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.**

12 (a) IN GENERAL.—Section 6 of the Endangered Spe-
13 cies Act of 1973 (16 U.S.C. 1535) is amended—

14 (1) by striking the section heading and sub-
15 sections (a) and (b) and inserting the following:

16 “COOPERATION WITH NON-FEDERAL PERSONS

17 “SEC. 6. (a) IN GENERAL.—In carrying out this Act,
18 the Secretary shall cooperate to the maximum extent prac-
19 ticable with the States, tribes, and other non-Federal per-
20 sons. The cooperation shall include consultation with the
21 appropriate States, tribes, and other non-Federal persons
22 before acquiring any land or water, or interest in land or
23 water, for the purpose of conserving any endangered spe-
24 cies or threatened species.

25 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

1 “(1) IN GENERAL.—The Secretary may enter
2 into a cooperative management agreement with any
3 State or group of States, political subdivision of a
4 State, tribe, local government, or other non-Federal
5 person for the management of a species or group of
6 species listed as endangered species or threatened
7 species under section 4(c)(1), a species or group of
8 species proposed to be listed under section 4(c)(1),
9 or a candidate species or group of candidate species.

10 “(2) SCOPE OF COOPERATIVE MANAGEMENT
11 AGREEMENTS.—

12 “(A) IN GENERAL.—A cooperative man-
13 agement agreement may provide for the man-
14 agement of a species or group of species on
15 both public and private lands that are under
16 the authority, control, or ownership of a State
17 or group of States, tribe, political subdivision of
18 a State, local government, or other non-Federal
19 person and that are affected by a listing deter-
20 mination, proposed determination, or proposed
21 candidacy for determination.

22 “(B) ACTIVITIES ON PRIVATE PROP-
23 erty.—A cooperative management agreement
24 may not restrict activity on private property un-
25 less the individual property owner gives written

1 consent to the restriction to the Secretary or
2 the State, tribe, political subdivision, local gov-
3 ernment, or other non-Federal person that is a
4 party to the agreement.

5 “(C) ACTIVITIES ON FEDERALLY OWNED
6 LANDS.—The Secretary may grant to the non-
7 Federal party to the agreement the authority to
8 undertake programs to enhance the population
9 or habitat of a species on federally owned lands,
10 except that the authority shall not conflict with
11 other uses of the land that are approved by the
12 Secretary or authorized by Congress.

13 “(3) NOTIFICATION.—Not later than 30 days
14 after submission of a request to enter into a cooper-
15 ative management agreement, the party submitting
16 the request shall provide notice of the request to any
17 non-Federal person or Federal power marketing ad-
18 ministration that would be subject to the proposed
19 cooperative management agreement.

20 “(4) DEVELOPMENT OF PROPOSED AGREE-
21 MENT.—

22 “(A) IN GENERAL.—The requesting party
23 shall develop and submit to the Secretary a pro-
24 posed cooperative management agreement.

1 “(B) NOTICE AND COMMENT.—The Sec-
2 retary shall—

3 “(i) publish in the Federal Register a
4 notice of availability and a request for pub-
5 lic comment on any proposed cooperative
6 management agreement between the Sec-
7 retary and any governmental entity; and

8 “(ii) hold a public hearing on such a
9 proposed cooperative management agree-
10 ment in each county in which the proposed
11 agreement would be in effect.

12 “(C) CONSIDERATION OF COMMENTS.—Be-
13 fore entering into a cooperative management
14 agreement with a governmental entity, the Sec-
15 retary shall consider and weigh carefully all in-
16 formation received in response to the request
17 for comment published under subparagraph
18 (B)(i) and the testimony presented in each
19 hearing held under subparagraph (B)(ii).

20 “(5) APPROVAL OF AGREEMENT.—

21 “(A) IN GENERAL.—Not later than 120
22 days after the submission of a proposed cooper-
23 ative management agreement under paragraph
24 (4), the Secretary shall determine whether the
25 proposed agreement is in accordance with this

1 subsection and will promote the conservation of
2 the species to which the proposed agreement
3 applies.

4 “(B) CRITERIA FOR APPROVAL.—The Sec-
5 retary shall approve and enter into a proposed
6 cooperative management agreement if the Sec-
7 retary determines that—

8 “(i) the requesting party has suffi-
9 cient authority under law to implement
10 and carry out the terms of the agreement;

11 “(ii) the agreement identifies an area
12 that serves as habitat for the species or
13 group of species to which the agreement
14 applies;

15 “(iii) the agreement adequately pro-
16 vides for the administration and manage-
17 ment of the identified area;

18 “(iv) the agreement promotes the con-
19 servation of the species to which the agree-
20 ment applies by committing Federal or
21 non-Federal efforts to the conservation;

22 “(v) the term of the agreement is of
23 sufficient duration to accomplish the agree-
24 ment; and

1 “(vi) the agreement is adequately
2 funded to carry out the agreement.

3 “(C) NOTICE OF AVAILABILITY OF
4 TERMS.—Not later than 30 days after entering
5 into a cooperative management agreement with
6 a governmental entity, the Secretary shall pub-
7 lish in the Federal Register a notice of avail-
8 ability of the terms of the agreement and the
9 response of the Secretary to all information re-
10 ceived or presented with respect to the agree-
11 ment under paragraph (4)(B).

12 “(6) VOLUNTEER STATUS.—The Secretary may
13 designate any non-Federal person participating or
14 assisting in the implementation of a cooperative
15 management agreement as a volunteer under section
16 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C.
17 742f(c)).

18 “(7) TECHNICAL ASSISTANCE.—The Secretary
19 shall provide technical assistance for the develop-
20 ment and implementation of a cooperative manage-
21 ment agreement with a non-Federal person.

22 “(8) ENVIRONMENTAL ASSESSMENTS.—The
23 preparation, approval, and entering into of a cooper-
24 ative management agreement shall not be subject to

1 section 102(2) of the National Environmental Policy
2 Act of 1969 (42 U.S.C. 4332(2)).

3 “(9) NO ADDITIONAL MEASURES.—With respect
4 to any species or area that is the subject of a coop-
5 erative management agreement, a party to the
6 agreement shall not be required—

7 “(A) to make any additional payment for
8 any purpose, or to accept any additional restric-
9 tion on any parcel of land available for develop-
10 ment or land management under the agree-
11 ment, without the consent of the party; or

12 “(B) to undertake any other measure to
13 minimize or mitigate impacts on the species in
14 addition to measures required by the agree-
15 ment.

16 “(10) EFFECT OF LISTING OF SPECIES.—A co-
17 operative management agreement shall remain in ef-
18 fect and shall not be required to be amended if a
19 species to which the agreement does not apply is de-
20 termined to be an endangered species or a threat-
21 ened species under section 4.

22 “(11) APPLICABILITY OF CERTAIN PROVI-
23 SIONS.—Sections 5, 7, and 9 shall not apply to such
24 activities of a party to a cooperative management

1 agreement as are conducted in accordance with the
2 agreement.

3 “(12) VIOLATIONS OF AGREEMENTS.—

4 “(A) NOTIFICATION.—If the Secretary de-
5 termines that a party to a cooperative manage-
6 ment agreement is not administering or acting
7 in accordance with the agreement, the Secretary
8 shall notify the party.

9 “(B) EFFECTS OF VIOLATIONS.—If a
10 party that is notified under subparagraph (A)
11 fails to take appropriate corrective action within
12 a period of time determined by the Secretary to
13 be reasonable (not to exceed 90 days after the
14 date of notification)—

15 “(i) the Secretary shall rescind the
16 entire cooperative management agreement
17 or the applicability of the agreement to the
18 party that is the subject of the notification;
19 and

20 “(ii) beginning on the date of rescis-
21 sion—

22 “(I) the entire agreement shall
23 not be effective, or the agreement
24 shall not be effective with respect to

1 the party, whichever is appropriate;
2 and

3 “(II) sections 5, 7, and 9 shall
4 apply to activities of the party.”, and

5 (2) by redesignating subsections (h) and (i) as
6 subsections (i) and (j), respectively, and

7 (3) by inserting after subsection (g) the follow-
8 ing new subsection:

9 “(h) HABITAT CONSERVATION GRANTS.—

10 “(1) IN GENERAL.—The Secretary may, from
11 funds appropriated under section 15(a), provide a
12 grant to a non-Federal person (other than an offi-
13 cer, employee, or agent (acting in an official capac-
14 ity) or a department or instrumentality of a State,
15 municipality, tribe, or political subdivision of a
16 State, municipality, or tribe) for the purpose of con-
17 serving, preserving, or improving habitat for any
18 species that is determined under section 4 to be an
19 endangered species or a threatened species.

20 “(B) CRITERIA.—The Secretary may provide a
21 grant under this subsection if the Secretary deter-
22 mines that—

23 “(A) the property for which the grant is
24 provided contains habitat that significantly con-

1 tributes to the protection of the population of
2 the species;

3 “(B) the property will be managed for spe-
4 cies protection for a period of time that is suffi-
5 cient to significantly contribute to the protec-
6 tion of the population of the species; and

7 “(C) the management of the habitat ad-
8 vances the interest of species protection.

9 “(3) TRANSFERABILITY.—A grant made under
10 this subsection shall be transferable to subsequent
11 owners of the property for which the grant is pro-
12 vided.”

13 (b) CONFORMING AMENDMENT.—The table of con-
14 tents in the first section of the Endangered Species Act
15 of 1973 (16 U.S.C. prec. 1531) is amended by striking
16 the item relating to section 6 and inserting the following
17 new item:

“Sec. 6. Cooperation with non-Federal persons.”

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S 1365 IS—2