

112TH CONGRESS  
1ST SESSION

# S. 1105

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

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IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Mrs. MURRAY (for herself, Ms. CANTWELL, Mrs. SHAHEEN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 2011”.

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 48 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        \$3,000,000,000 for all projects (excluding re-  
22        funding bonds).

23            (B) INITIAL ALLOCATION OF LIMITA-  
24        TION.—The limitation described in subpara-  
25        graph (A) shall be allocated by the Secretary of

1 the Treasury among qualified organizations as  
2 follows:

3 (i) Thirty-five percent for qualified  
4 project costs with respect to the cost of ac-  
5 quisition by any qualified organization in  
6 the Pacific Northwest region.

7 (ii) Thirty percent for qualified  
8 project costs with respect to the cost of ac-  
9 quisition by any qualified organization in  
10 the Western region.

11 (iii) Seventeen and one-half percent  
12 for qualified project costs with respect to  
13 the cost of acquisition by any qualified or-  
14 ganization in the Southeast region.

15 (iv) Seventeen and one-half percent  
16 for qualified project costs with respect to  
17 the cost of acquisition by any qualified or-  
18 ganization in the Northeast region.

19 (C) PROCEDURE FOR ISSUANCE.—The  
20 Secretary shall establish a system for allocating  
21 the limitation to qualified forest conservation  
22 bonds within each region, which shall be based  
23 on the chronological order, within each region,  
24 in which applications are made to the Secretary  
25 for an allocation of the limitation.

(D) SECONDARY ALLOCATION PROCEDURE.—If, for the period ending on the last day of the 24th month after the date of enactment of this Act, the limitation amount for any region under subparagraph (B) exceeds the amount of bonds allocated by the Secretary of the Treasury during such period, the Secretary of the Treasury may allocate such excess among qualified organizations in any other region in such manner as the Secretary of the Treasury determines appropriate.

(E) REGIONS.—For purposes of this paragraph—

(i) PACIFIC NORTHWEST REGION.—The term “Pacific Northwest region” means Region 6 as defined by the United States Forest Service of the Department of Agriculture under section 202.2 of title 36, Code of Federal Regulations.

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

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

1 (iv) NORTHEAST REGION.—The term  
2 “Northeast region” means Region 9 (as so  
3 defined).

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

7 (A) the cost of acquisition (directly or  
8 through reimbursement or refinancing) by the  
9 qualified organization from an unrelated person  
10 of forests and forest land which at the time of  
11 acquisition or immediately thereafter are sub-  
12 ject to a conservation restriction described in  
13 subsection (c)(2),

14 (B) interest payments on the qualified for-  
15 est conservation bonds for the 3-year period be-  
16 ginning on the date of issuance of such bonds,  
17 and

18 (C) credit enhancement fees which con-  
19 stitute qualified guarantee fees (within the  
20 meaning of section 148 of such Code).

21 (5) SPECIAL RULES.—In applying the Internal  
22 Revenue Code of 1986 to any qualified forest con-  
23 servation bond, the following modifications shall  
24 apply:

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

3 (B) For purposes of section 147(b) of such  
4 Code (relating to maturity may not exceed 120  
5 percent of economic life), the land and standing  
6 timber acquired with proceeds of qualified for-  
7 est conservation bonds shall have an economic  
8 life of 35 years.

9 (C) Subsections (c) and (d) of section 147  
10 of such Code (relating to limitations on acquisi-  
11 tion of land and existing property) shall not  
12 apply.

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

16 (6) TREATMENT OF CURRENT REFUNDING  
17 BONDS.—Paragraphs (2)(C) and (3) shall not apply  
18 to any bond (or series of bonds) issued to refund a  
19 qualified forest conservation bond issued before the  
20 date which is 48 months after the date of the enact-  
21 ment of this Act, if—

22 (A) the average maturity date of the issue  
23 of which the refunding bond is a part is not  
24 later than the average maturity date of the  
25 bonds to be refunded by such issue,

1 (B) the amount of the refunding bond does  
 2 not exceed the outstanding amount of the re-  
 3 funded bond, and

4 (C) the net proceeds of the refunding bond  
 5 are used to redeem the refunded bond not later  
 6 than 90 days after the date of the issuance of  
 7 the refunding bond.

8 For purposes of subparagraph (A), average maturity  
 9 shall be determined in accordance with section  
 10 147(b)(2)(A) of such Code.

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

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

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

21 (2) LIMITATION.—The amount of income ex-  
 22 cluded from gross income under paragraph (1) for  
 23 any taxable year shall not exceed the amount used  
 24 by the qualified organization to make debt service

1 payments during such taxable year for qualified for-  
 2 est conservation bonds.

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

5 (A) IN GENERAL.—The term “qualified  
 6 harvesting activity” means the sale, lease, or  
 7 harvesting, of standing timber—

8 (i) on land owned by a qualified orga-  
 9 nization which was acquired with proceeds  
 10 of qualified forest conservation bonds, and

11 (ii) pursuant to a qualified conserva-  
 12 tion plan adopted by the qualified organi-  
 13 zation within 2 years of the acquisition.

14 (B) EXCEPTIONS.—

15 (i) CESSATION AS QUALIFIED ORGANI-  
 16 ZATION.—The term “qualified harvesting  
 17 activity” shall not include any sale, lease,  
 18 or harvesting for any period during which  
 19 the organization ceases to qualify as a  
 20 qualified organization.

21 (ii) EXCEEDING LIMITS ON HAR-  
 22 VESTING.—The term “qualified harvesting  
 23 activity” shall not include any sale, lease,  
 24 or harvesting of standing timber on land  
 25 acquired with proceeds of qualified forest



1 conservation bonds to the extent that the  
2 average quantity of timber removed from  
3 such land exceeds the quantity which can  
4 be removed from such land annually in  
5 perpetuity on a sustained-yield basis meas-  
6 ured over the harvest rotation with respect  
7 to such land. The limitation described in  
8 the preceding sentence shall not apply to  
9 post-fire restoration and rehabilitation or  
10 sanitation harvesting of timber stands  
11 which are substantially damaged by fire,  
12 windthrow, or other catastrophes, or which  
13 are in imminent danger from insect or dis-  
14 ease attack.

15 (4) TERMINATION.—This subsection shall not  
16 apply to any qualified harvesting activity of a quali-  
17 fied organization occurring after the date on  
18 which—

19 (A) there is no outstanding qualified forest  
20 conservation bond with respect to such qualified  
21 organization, or

22 (B) any such bond ceases to be a tax-ex-  
23 empt bond.

24 (5) PARTIAL RECAPTURE OF BENEFITS IF HAR-  
25 VESTING LIMIT EXCEEDED.—If, as of the date that

1       this subsection ceases to apply under paragraph  
 2       (4)(B), the quantity of timber removed from the  
 3       land exceeds the requirement of paragraph  
 4       (3)(B)(ii), the tax imposed by chapter 1 of the Inter-  
 5       nal Revenue Code of 1986 shall be increased, under  
 6       rules prescribed by the Secretary of the Treasury, by  
 7       the sum of the tax benefits attributable to such ex-  
 8       cess and interest at the underpayment rate under  
 9       section 6621 of such Code for the period of the un-  
 10      derpayment.

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

12           (1) QUALIFIED CONSERVATION PLAN.—The  
 13      term “qualified conservation plan” means a multiple  
 14      land use program or plan which—

15           (A) is designed and administered primarily  
 16      for the purposes of protecting and enhancing  
 17      wildlife and fish, timber, scenic attributes,  
 18      recreation, and soil and water quality of the  
 19      forest and forest land,

20           (B) mandates that conservation of forest  
 21      and forest land is the single-most significant  
 22      use of the forest and forest land, and

23           (C) requires that timber harvesting be con-  
 24      sistent with—

- 1 (i) restoring and maintaining ref-  
2 erence conditions for the region's ecotype,  
3 (ii) restoring and maintaining a rep-  
4 resentative sample of young, mid, and late  
5 successional forest age classes,  
6 (iii) maintaining or restoring the re-  
7 sources' ecological health for purposes of  
8 preventing damage from fire, insect, or dis-  
9 ease,  
10 (iv) maintaining or enhancing wildlife  
11 or fish habitat, or  
12 (v) enhancing research opportunities  
13 in sustainable renewable resource uses.

14 (2) CONSERVATION RESTRICTION.—The con-  
15 servation restriction described in this paragraph is a  
16 restriction which—

- 17 (A) is granted (through sale or donation)  
18 in perpetuity to an unrelated person which is  
19 described in section 170(h)(3) of such Code and  
20 which, in the case of a nongovernmental unit,  
21 is organized and operated for conservation pur-  
22 poses,  
23 (B) meets the requirements of clause (ii)  
24 or (iii)(II) of section 170(h)(4)(A) of such  
25 Code,

(C) obligates the qualified organization to pay the costs incurred by the holder of the conservation restriction in monitoring compliance with such restriction to the extent the holder of the conservation restriction does not have a dedicated source of such funding, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term “qualified organization” means, during the time any qualified forest conservation bond for the organization is outstanding, an organization exempt from tax under section 501(a)—

(A) substantially all the activities of which are charitable, scientific or educational, including acquiring, protecting, restoring, managing, sustainably harvesting, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific, and public benefit,

(B) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques,

1 (C) which has at all times a board of direc-  
2 tors—

3 (i) at least 20 percent of the members  
4 of which are representatives of the con-  
5 servation community,

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

8 (iii) not more than one-third of the  
9 members of which are individuals who are  
10 or were at any time within 5 years before  
11 the beginning of a term of membership on  
12 the board, an employee of, independent  
13 contractor with respect to, officer of, direc-  
14 tor of, or held a material financial interest  
15 in, a commercial forest products enterprise  
16 with which the qualified organization has a  
17 contractual or other financial arrangement,

18 (D) the bylaws of which require at least  
19 two-thirds of the members of the board of direc-  
20 tors to vote affirmatively to approve the quali-  
21 fied conservation plan and any change thereto,  
22 and

23 (E) upon dissolution, is required to dedi-  
24 cate its assets to—

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

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

7 (4) UNRELATED PERSON.—The term “unre-  
8 lated person” means a person who is not a related  
9 person.

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

12 (A) such person bears a relationship to  
13 such other person described in section 267(b)  
14 (determined without regard to paragraph (9)  
15 thereof), or 707(b)(1), of such Code, deter-  
16 mined by substituting “25 percent” for “50  
17 percent” each place it appears therein, and

18 (B) in the case such other person is a non-  
19 profit organization, if such person controls di-  
20 rectly or indirectly more than 25 percent of the  
21 governing body of such organization.

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