

118TH CONGRESS
1ST SESSION

S. 1366

To require the Secretary of Agriculture to establish a forest incentives program to keep forests intact and sequester carbon on private forest land of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2023

Mrs. SHAHEEN (for herself and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To require the Secretary of Agriculture to establish a forest incentives program to keep forests intact and sequester carbon on private forest land of the United States, 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 “Forest Incentives Pro-
5 gram Act of 2023”.

6 **SEC. 2. FOREST INCENTIVES PROGRAM.**

7 (a) **DEFINITIONS.**—In this section:

1 (1) CARBON INCENTIVES CONTRACT; CON-
2 TRACT.—The term “carbon incentives contract” or
3 “contract” means a 15- to 30-year contract that
4 specifies—

5 (A) the eligible practices that will be un-
6 dertaken;

7 (B) the acreage of eligible land on which
8 the practices will be undertaken;

9 (C) the agreed rate of compensation per
10 acre;

11 (D) a schedule to verify that the terms of
12 the contract have been fulfilled; and

13 (E) such other terms as are determined
14 necessary by the Secretary.

15 (2) CONSERVATION EASEMENT AGREEMENT;
16 AGREEMENT.—The term “conservation easement
17 agreement” or “agreement” means a permanent
18 conservation easement that—

19 (A) covers eligible land that will not be
20 converted for development;

21 (B) is enrolled under a carbon incentives
22 contract; and

23 (C) is consistent with the guidelines for—

24 (i) the Forest Legacy Program estab-
25 lished under section 7 of the Cooperative

1 Forestry Assistance Act of 1978 (16
2 U.S.C. 2103c), subject to the condition
3 that an eligible practice shall be considered
4 to be a conservation value for purposes of
5 such consistency; or

6 (ii) any other program approved by
7 the Secretary for use under this section to
8 provide consistency with Federal legal re-
9 quirements for permanent conservation
10 easements.

11 (3) ELIGIBLE LAND.—The term “eligible land”
12 means forest land in the United States that is pri-
13 vately owned at the time of initiation of a carbon in-
14 centives contract or conservation easement agree-
15 ment.

16 (4) ELIGIBLE PRACTICE.—

17 (A) IN GENERAL.—The term “eligible
18 practice” means a forestry practice, including
19 improved forest management that produces
20 marketable forest products, that is determined
21 by the Secretary to provide measurable in-
22 creases in carbon sequestration and storage be-
23 yond customary practices on comparable land.

24 (B) INCLUSIONS.—The term “eligible prac-
25 tice” includes—

1 (i) afforestation on nonforested land,
2 such as marginal crop or pasture land,
3 windbreaks, shelterbelts, stream buffers,
4 including working land and urban forests
5 and parks, or other areas identified by the
6 Secretary;

7 (ii) reforestation on forest land im-
8 pacted by wildfire, pests, wind, or other
9 stresses, including working land and urban
10 forests and parks;

11 (iii) improved forest management,
12 with appropriate crediting for the carbon
13 benefits of harvested wood products,
14 through practices such as improving regen-
15 eration after harvest, planting in under-
16 stocked forests, reducing competition from
17 slow-growing species, thinning to encour-
18 age growth, changing rotations to increase
19 carbon storage, improving harvest effi-
20 ciency or wood use; and

21 (iv) such other practices as the Sec-
22 retary determines to be appropriate.

23 (5) FOREST INCENTIVES PROGRAM; PRO-
24 GRAM.—The term “forest incentives program” or

1 “program” means the forest incentives program es-
2 tablished under subsection (b)(1).

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Agriculture.

5 (b) SUPPLEMENTAL GREENHOUSE GAS EMISSION
6 REDUCTIONS IN UNITED STATES.—

7 (1) IN GENERAL.—The Secretary shall establish
8 a forest incentives program to achieve supplemental
9 greenhouse gas emission reductions and carbon se-
10 questration on private forest land of the United
11 States through—

12 (A) carbon incentives contracts; and

13 (B) conservation easement agreements.

14 (2) PRIORITY.—In selecting projects under this
15 subsection, the Secretary shall provide a priority for
16 contracts and agreements—

17 (A) that sequester the most carbon on a
18 per acre basis, with appropriate crediting for
19 the carbon benefits of harvested wood products;
20 and

21 (B) that create forestry jobs or protect
22 habitats and achieve significant other environ-
23 mental, economic, and social benefits.

24 (3) ELIGIBILITY.—

1 (A) IN GENERAL.—To participate in the
2 program, an owner of eligible land shall—

3 (i) enter into a carbon incentives con-
4 tract; and

5 (ii) fulfill such other requirements as
6 the Secretary determines to be necessary.

7 (B) CONTINUED ELIGIBLE PRACTICES.—
8 An owner of eligible land who has been carrying
9 out eligible practices on the eligible land shall
10 not be barred from entering into a carbon in-
11 centives contract under this subsection to con-
12 tinue carrying out the eligible practices on the
13 eligible land.

14 (C) DURATION OF CONTRACT.—A contract
15 shall be for a term of not less than 15, nor
16 more than 30, years, as determined by the
17 owner of eligible land.

18 (D) COMPENSATION UNDER CONTRACT.—
19 The Secretary shall determine the rate of com-
20 pensation per acre under the contract so that
21 the longer the term of the contract, the higher
22 rate of compensation.

23 (E) RELATIONSHIP TO OTHER PRO-
24 GRAMS.—An owner or operator shall not be
25 prohibited from participating in the program

1 due to participation of the owner or operator in
2 other Federal or State conservation assistance
3 programs.

4 (4) COMPLIANCE.—In developing regulations
5 for carbon incentives contracts under this sub-
6 section, the Secretary shall specify requirements to
7 address whether the owner of eligible land has com-
8 pleted contract and agreement requirements.

9 (c) INCENTIVE PAYMENTS.—

10 (1) IN GENERAL.—The Secretary shall provide
11 to owners of eligible land financial incentive pay-
12 ments for—

13 (A) eligible practices that measurably in-
14 crease carbon sequestration and storage over a
15 designated period on eligible land, with appro-
16 priate crediting for the carbon benefits of har-
17 vested wood products, as specified through a
18 carbon incentives contract; and

19 (B) subject to paragraph (2), conservation
20 easements on eligible land covered under a con-
21 servation easement agreement.

22 (2) COMPENSATION.—The Secretary shall de-
23 termine the amount of compensation to be provided
24 under a contract under this subsection based on the
25 emissions reductions obtained or avoided and the du-

1 ration of the reductions, with due consideration to
2 prevailing carbon pricing as determined by any rel-
3 evant or State compliance offset programs.

4 (3) NO CONSERVATION EASEMENT AGREEMENT
5 REQUIRED.—Eligibility for financial incentive pay-
6 ments under a carbon incentives contract described
7 in paragraph (1)(A) shall not require a conservation
8 easement agreement.

9 (d) REGULATIONS.—Not later than 1 year after the
10 date of enactment of this Act, the Secretary shall issue
11 regulations that specify eligible practices and related com-
12 pensation rates, standards, and guidelines as the basis for
13 entering into the program with owners of eligible land.

14 (e) SET-ASIDE OF FUNDS FOR CERTAIN PUR-
15 POSES.—

16 (1) IN GENERAL.—At the discretion of the Sec-
17 retary, a portion of program funds made available
18 under the program for a fiscal year may be used—

19 (A) to develop forest carbon modeling and
20 methodologies that will improve the projection
21 of carbon gains for any forest practices made
22 eligible under the program;

23 (B) to provide additional incentive pay-
24 ments for specified management activities that

1 increase the adaptive capacity of land under a
2 carbon incentives contract; and

3 (C) for the Forest Inventory and Analysis
4 Program of the Forest Service to develop im-
5 proved measurement and monitoring of forest
6 carbon stocks.

7 (2) PROGRAM COMPONENTS.—In establishing
8 the program, the Secretary shall provide that funds
9 provided under this section shall not be substituted
10 for, or otherwise used as a basis for reducing, fund-
11 ing authorized or appropriated under other pro-
12 grams to compensate owners of eligible land for ac-
13 tivities that are not covered under the program.

14 (f) PROGRAM MEASUREMENT, MONITORING,
15 VERIFICATION, AND REPORTING.—

16 (1) MEASUREMENT, MONITORING, AND
17 VERIFICATION.—The Secretary shall establish and
18 implement protocols that provide monitoring and
19 verification of compliance with the terms of con-
20 tracts and agreements.

21 (2) REPORTING REQUIREMENT.—At least annu-
22 ally, the Secretary shall submit to Congress a report
23 that contains—

24 (A) an estimate of annual and cumulative
25 reductions achieved as a result of the program,

1 determined using standardized measures, in-
2 cluding measures of economic efficiency;

3 (B) a summary of any changes to the pro-
4 gram that will be made as a result of program
5 measurement, monitoring, and verification;

6 (C) the total number of acres enrolled in
7 the program by method; and

8 (D) a State-by-State summary of the data.

9 (3) AVAILABILITY OF REPORT.—Each report
10 required by this subsection shall be available to the
11 public through the website of the Department of Ag-
12 riculture.

13 (4) PROGRAM ADJUSTMENTS.—At least once
14 every 2 years the Secretary shall adjust eligible prac-
15 tices and compensation rates for future carbon in-
16 centives contracts based on the results of monitoring
17 under paragraph (1) and reporting under paragraph
18 (2), if determined necessary by the Secretary.

19 (5) ESTIMATING CARBON BENEFITS.—Any
20 modeling, methodology, or protocol resource devel-
21 oped under this section—

22 (A) shall be suitable for estimating carbon
23 benefits associated with eligible practices for
24 the purpose of incentives under this section;
25 and

1 (B) may be used for netting by States or
2 emission sources under Federal programs relat-
3 ing to carbon emissions.

4 (g) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as are nec-
6 essary to carry out this section.

7 **SEC. 3. MATERIAL CHOICES IN BUILDINGS FOR SUPPLE-**
8 **MENTAL GREENHOUSE GAS EMISSION RE-**
9 **DUCTIONS IN UNITED STATES.**

10 (a) DEFINITIONS.—In this section:

11 (1) ELIGIBLE BUILDING.—The term “eligible
12 building” means a nonresidential building used for
13 commercial or State or local government purposes.

14 (2) ELIGIBLE PRODUCT.—The term “eligible
15 product” means a commercial or industrial product,
16 such as an intermediate, feedstock, or end product
17 (other than food or feed), that is composed in whole
18 or in part of biological products, including renewable
19 agricultural and forestry materials used as struc-
20 tural building material.

21 (3) PROGRAM.—The term “program” means
22 the greenhouse gas incentives program established
23 under this section.

24 (4) SECRETARY.—The term “Secretary” means
25 the Secretary of Agriculture.

1 (b) SUPPLEMENTAL GREENHOUSE GAS EMISSION
2 REDUCTIONS IN BUILDINGS.—

3 (1) IN GENERAL.—The Secretary shall establish
4 a greenhouse gas incentives program to achieve sup-
5 plemental greenhouse gas emission reductions from
6 material choices in buildings, based on the lifecycle
7 assessment of the building materials.

8 (2) FINANCIAL INCENTIVE PAYMENTS.—The
9 Secretary shall provide to owners of eligible build-
10 ings incentive payments for the use of eligible prod-
11 ucts in buildings for sequestering carbon based on a
12 lifecycle assessment of the structural assemblies, as
13 compared to a model building as a result of using
14 eligible products in substitution for more energy-in-
15 tensive materials in—

16 (A) new construction; or

17 (B) building renovation.

18 (c) PROGRAM REQUIREMENTS.—

19 (1) APPLICATIONS.—To be eligible to partici-
20 pate in the program, the owner of an eligible build-
21 ing shall submit to the Secretary an application at
22 such time, in such manner, and containing such in-
23 formation as the Secretary may require.

1 (2) COMPONENTS.—In establishing the pro-
2 gram, the Secretary shall require that payments for
3 activities under the program shall be—

4 (A) established at a rate not to exceed the
5 net estimated benefit an owner of an eligible
6 building would receive for similar practices
7 under any federally established carbon offset
8 program, taking into consideration the costs as-
9 sociated with the issuance of credits and com-
10 pliance with reversal provisions;

11 (B) provided to owners of eligible buildings
12 demonstrating at least a 20-percent reduction
13 in carbon emissions potential, based on a
14 lifecycle assessment of the structural assem-
15 blies, as compared to the structural assemblies
16 of a model building, subject to the requirements
17 that—

18 (i) the Secretary shall identify a
19 model baseline nonresidential building—

20 (I) of common size and function;

21 and

22 (II) having a service life of not
23 less than 60 years; and

24 (ii) applicants shall evaluate the car-
25 bon emissions potential of the baseline

1 building and the proposed building using
2 the same lifecycle assessment software tool
3 and data sets, which shall be compliant
4 with the document numbered ISO 14044;
5 and

6 (C) provided on certification by the owner
7 of an eligible building and verification by the
8 Secretary, after consultation with the Secretary
9 of Energy, that—

10 (i) the eligible building meets the re-
11 quirements of the applicable State com-
12 mercial building energy efficiency code (as
13 in effect on the date of the applicable per-
14 mit of the eligible building); and

15 (ii) the State has made the certifi-
16 cation required pursuant to section 304 of
17 the Energy Conservation and Production
18 Act (42 U.S.C. 6833).

19 (3) INCENTIVE PAYMENTS.—A participant in
20 the program shall receive payment under the pro-
21 gram on completion of construction or renovation of
22 the applicable eligible building.

23 (d) REPORTS.—Not less frequently than once each
24 year, the Secretary shall submit to Congress a report that
25 contains—

1 (1) an estimate of annual and cumulative re-
2 ductions achieved as a result of the program—

3 (A) determined by using lifecycle assess-
4 ment software that is compliant with the docu-
5 ment numbered ISO 14044; and

6 (B) expressed in terms of the total number
7 of cars removed from the road;

8 (2) a summary of any changes to the program
9 that will be made as a result of past implementation
10 of the program; and

11 (3) the total number of buildings under carbon
12 incentives contracts as of the date of the report.

13 (e) ANALYTICAL REQUIREMENTS.—For purposes of
14 this section—

15 (1) any carbon emissions potential calculation
16 shall—

17 (A) be performed in accordance with
18 standard lifecycle assessment practice; and

19 (B) include removal and sequestration of
20 carbon dioxide from the use of biobased prod-
21 ucts, as well as recycled content materials;

22 (2) a full lifecycle assessment shall be con-
23 ducted taking into consideration all lifecycle stages,
24 including—

25 (A) resource extraction and processing;

1 (B) product manufacturing;

2 (C) onsite construction of assemblies;

3 (D) transportation;

4 (E) maintenance and replacement cycles
5 over an assumed eligible building service life of
6 60 years; and

7 (F) demolition;

8 (3) structural assemblies shall be considered to
9 include columns, beams, girders, purlins, floor deck,
10 roof, and structural envelope elements;

11 (4) primary materials shall be considered to in-
12 clude common products used as the structural sys-
13 tem, such as wood, steel, concrete, or masonry; and

14 (5) the effects of recycling, reuse, or energy re-
15 covery beyond the boundaries of an applicable study
16 system shall not be taken in account.

17 (f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as are nec-
19 essary to carry out this section.

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