

118TH CONGRESS  
1ST SESSION

# S. 2250

To amend the Food Security Act of 1985 to establish a groundwater conservation easement program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2023

Mr. BENNET (for himself, Mr. MORAN, and Mr. HEINRICH) 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 Food Security Act of 1985 to establish a groundwater conservation easement program, 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 “Voluntary Ground-  
5 water Conservation Act of 2023”.

1 **SEC. 2. GROUNDWATER CONSERVATION EASEMENT PRO-**  
 2 **GRAM.**

3 (a) AGRICULTURAL CONSERVATION EASEMENT PRO-  
 4 GRAM PURPOSES.—Section 1265(b) of the Food Security  
 5 Act of 1985 (16 U.S.C. 3865(b)) is amended—

6 (1) in paragraph (3), by striking “and” at the  
 7 end;

8 (2) in paragraph (4), by striking the period at  
 9 the end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(5) facilitate reductions in groundwater con-  
 12 sumption to support local, regional, or State ground-  
 13 water management.”.

14 (b) ESTABLISHMENT.—Subtitle H of title XII of the  
 15 Food Security Act of 1985 (16 U.S.C. 3865 et seq.) is  
 16 amended by adding at the end the following:

17 **“SEC. 1265E. GROUNDWATER CONSERVATION EASEMENT**  
 18 **PROGRAM.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-  
 21 tity’ means—

22 “(A) an agency of State or local govern-  
 23 ment;

24 “(B) an Indian Tribe; or

25 “(C) an organization described in section  
 26 1265A(3)(B).

1           “(2) ELIGIBLE LAND.—The term ‘eligible land’  
2 means the surface estate of land on which eligible  
3 water rights have been historically used, as deter-  
4 mined by governing State law, including—

5           “(A) cropland;

6           “(B) grassland;

7           “(C) rangeland;

8           “(D) pasture land;

9           “(E) nonindustrial private forest land; and

10          “(F) other agricultural land.

11          “(3) ELIGIBLE WATER RIGHTS.—The term ‘eli-  
12 gible water rights’ means rights that are—

13          “(A) owned or controlled by 1 or more pri-  
14 vate, governmental, or Tribal landowners to  
15 groundwater that has been used on eligible  
16 land; and

17          “(B) subject to a pending offer for the  
18 purchase of a groundwater conservation ease-  
19 ment from an eligible entity, the purchase of  
20 which would—

21           “(i) promote reduced groundwater  
22 consumption and reduced reliance on  
23 groundwater; and

24           “(ii) advance local, regional, or State  
25 groundwater management consistent with

1 the purposes of the groundwater conserva-  
2 tion easement program.

3 “(4) GROUNDWATER CONSERVATION EASE-  
4 MENT.—

5 “(A) IN GENERAL.—The term ‘ground-  
6 water conservation easement’ means an ease-  
7 ment or other interest in eligible water rights  
8 that—

9 “(i) is conveyed for the purpose of  
10 supporting local, regional, or State ground-  
11 water management that reduces ground-  
12 water consumption while providing commu-  
13 nity and environmental benefits;

14 “(ii) includes restrictions on the con-  
15 sumption of groundwater related to the  
16 historical withdrawals of the groundwater  
17 of the landowner associated with the en-  
18 tirety of the eligible land associated with  
19 the eligible water rights; and

20 “(iii) expressly permits the landowner  
21 the right to continue agricultural produc-  
22 tion and other uses compatible with re-  
23 duced groundwater consumption, con-  
24 sistent with the legally permissible use and

1 administration of the water rights by the  
2 applicable State.

3 “(B) ELIGIBLE LAND.—An easement or  
4 other interest described in subparagraph (A)  
5 may include eligible land associated with the eli-  
6 gible water rights described in that subpara-  
7 graph, subject to the choice of the owner of the  
8 eligible land, consistent with applicable State  
9 law.

10 “(b) ESTABLISHMENT.—The Secretary shall estab-  
11 lish a groundwater conservation easement program for the  
12 conservation of groundwater resources associated with eli-  
13 gible water rights, which may include eligible land associ-  
14 ated with those eligible water rights, through groundwater  
15 conservation easements.

16 “(c) PURPOSES.—The purposes of the groundwater  
17 conservation easement program are—

18 “(1) to promote the conservation and reduction  
19 in consumption of groundwater resources, including  
20 the recharging of declining aquifers, while allowing  
21 for continued agricultural production and other uses;

22 “(2) to support landowners in the adaptation  
23 to, and reduction in reliance on, declining ground-  
24 water resources; and

1           “(3) to protect agricultural use, community vi-  
2           tality, and economic well-being, including through  
3           the development of renewable energy, in the face of  
4           long-term declines in groundwater availability.

5           “(d) AVAILABILITY OF ASSISTANCE.—The Secretary  
6 shall facilitate and provide funding for—

7           “(1) the purchase by eligible entities of ground-  
8           water conservation easements; and

9           “(2) technical assistance to implement the  
10          groundwater conservation easement program.

11          “(e) COST-SHARE ASSISTANCE.—

12          “(1) IN GENERAL.—The Secretary shall encour-  
13          age conservation of groundwater resources through  
14          cost-share assistance to eligible entities for pur-  
15          chasing groundwater conservation easements.

16          “(2) SCOPE OF ASSISTANCE AVAILABLE.—

17          “(A) IN GENERAL.—An agreement de-  
18          scribed in paragraph (4) shall provide for—

19                  “(i) subject to subparagraph (D), a  
20                  Federal share determined by the Secretary  
21                  of an amount not to exceed 65 percent of  
22                  the fair market value of the groundwater  
23                  conservation easement, as determined  
24                  under subparagraph (B); and

1           “(ii) an additional payment in an  
2           amount not to exceed 5 percent of the  
3           Federal share determined under clause (i)  
4           for costs associated with securing a deed to  
5           the groundwater conservation easement,  
6           including the costs of valuation, survey, in-  
7           spection, and title.

8           “(B) FAIR MARKET VALUE.—The fair  
9           market value of a groundwater conservation  
10          easement shall be determined by the Secretary  
11          using—

12                 “(i) the Uniform Standards of Profes-  
13                 sional Appraisal Practice;

14                 “(ii) an areawide market analysis or  
15                 survey;

16                 “(iii) another industry-approved meth-  
17                 od;

18                 “(iv) a methodology used by another  
19                 Federal agency;

20                 “(v) a model for valuation developed  
21                 by a research institution; or

22                 “(vi) a method of valuing ecosystem  
23                 services associated with protected water  
24                 rights.

25           “(C) REIMBURSABLE COSTS.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), the Secretary shall pro-  
3           vide a payment under subparagraph (A)(ii)  
4           to an eligible entity as a reimbursement  
5           after the costs described in that subpara-  
6           graph are incurred by the eligible entity.

7           “(ii) LIMITED RESOURCE LAND-  
8           OWNERS.—In the case of eligible water  
9           rights or eligible land owned by a limited-  
10          resource landowner, as determined by the  
11          Secretary, the Secretary shall provide a  
12          payment under subparagraph (A)(ii) in ad-  
13          vance as part of an agreement described in  
14          paragraph (4).

15          “(D) LOWER FEDERAL SHARE OPTION.—

16               “(i) IN GENERAL.—An eligible entity  
17               may elect to enter into an agreement de-  
18               scribed in paragraph (4) under which the  
19               Federal share does not exceed 25 percent  
20               of the fair market value of the ground-  
21               water conservation easement, as deter-  
22               mined under subparagraph (B).

23               “(ii) NO RIGHT OF ENFORCEMENT.—  
24               Notwithstanding paragraph (4)(C)(iii), an  
25               agreement with respect to which an eligible



1           entity makes the election under clause (i)  
2           shall not include a right of enforcement for  
3           the Secretary.

4           “(E) PERMISSIBLE FORMS.—The non-Fed-  
5           eral share provided by an eligible entity under  
6           this paragraph may comprise—

7                   “(i) cash resources;

8                   “(ii) a charitable donation or qualified  
9                   conservation contribution (as defined in  
10                  section 170(h) of the Internal Revenue  
11                  Code of 1986) from the landowner from  
12                  which the groundwater conservation ease-  
13                  ment will be purchased;

14                  “(iii) costs associated with securing a  
15                  deed to the groundwater conservation ease-  
16                  ment, including the cost of appraisal, sur-  
17                  vey, inspection, and title; and

18                  “(iv) other costs, as determined by the  
19                  Secretary.

20           “(3) EVALUATION AND RANKING OF APPLICA-  
21           TIONS.—

22                   “(A) CRITERIA.—The Secretary shall es-  
23                  tablish evaluation and ranking criteria to maxi-  
24                  mize the benefit of Federal investment under

1 the groundwater conservation easement pro-  
2 gram.

3 “(B) CONSIDERATIONS.—In establishing  
4 the criteria under subparagraph (A), the Sec-  
5 retary shall emphasize support for—

6 “(i) maintaining or enhancing ground-  
7 water-dependent ecosystems; and

8 “(ii) advancing long-term groundwater  
9 sustainability consistent with existing State  
10 or local groundwater management initia-  
11 tives.

12 “(C) BIDDING DOWN.—If the Secretary  
13 determines that 2 or more applications for cost-  
14 share assistance under this subsection are com-  
15 parable in achieving the purpose of the ground-  
16 water conservation easement program, the Sec-  
17 retary shall not assign a higher priority to any  
18 of those applications solely on the basis of less-  
19 er cost to the groundwater conservation ease-  
20 ment program.

21 “(4) AGREEMENTS WITH ELIGIBLE ENTITIES.—

22 “(A) IN GENERAL.—The Secretary shall  
23 enter into agreements with eligible entities to  
24 stipulate the terms and conditions under which

1 the eligible entity is permitted to use cost-share  
2 assistance provided under this subsection.

3 “(B) LENGTH OF AGREEMENTS.—An  
4 agreement under this paragraph shall be for a  
5 term that is—

6 “(i) in the case of an eligible entity  
7 certified under the process described in  
8 paragraph (5), a minimum of 5 years; and

9 “(ii) for all other eligible entities, not  
10 less than 3, but not more than 5, years.

11 “(C) MINIMUM TERMS AND CONDITIONS.—  
12 An eligible entity shall be authorized to use  
13 such terms and conditions for groundwater con-  
14 servation easements as the eligible entity may  
15 establish, subject to the condition that the Sec-  
16 retary shall determine that those terms and  
17 conditions—

18 “(i) are consistent with the purposes  
19 of the groundwater conservation easement  
20 program;

21 “(ii) permit effective enforcement of  
22 the conservation purposes of the ground-  
23 water conservation easements, including—

1           “(I) a mechanism for the meas-  
2           urement of groundwater pumping re-  
3           ductions; and

4           “(II) the ability to enforce those  
5           reductions under relevant State law;

6           “(iii) except as provided in paragraph  
7           (2)(D)(ii), include a right of enforcement  
8           for the Secretary, which may be used only  
9           if the terms of the groundwater conserva-  
10          tion easement are not enforced by the  
11          holder of the groundwater conservation  
12          easement; and

13          “(iv) subject the eligible water rights  
14          and eligible land, if applicable, in which an  
15          interest is purchased to a groundwater  
16          conservation easement plan that includes—

17               “(I) a description of the activities  
18               that demonstrate protection of soil re-  
19               sources and reduced groundwater use  
20               and meet any other conservation pur-  
21               poses for which the groundwater con-  
22               servation easement was acquired;

23               “(II) a groundwater conservation  
24               plan, where appropriate, that includes,  
25               at the option of the Secretary, activi-

1 ties that will help maintain or enhance  
2 groundwater-dependent ecosystems;  
3 and

4 “(III) any other provisions that  
5 the Secretary determines to be nec-  
6 essary to accomplish the purposes of  
7 the groundwater conservation ease-  
8 ment program.

9 “(D) SUBSTITUTION OF QUALIFIED  
10 PROJECTS.—An agreement under this para-  
11 graph shall allow, on mutual agreement of the  
12 parties, substitution of qualified projects that  
13 are identified at the time of the proposed sub-  
14 stitution.

15 “(E) EFFECT OF VIOLATION.—If a viola-  
16 tion of a term or condition of an agreement  
17 under this paragraph occurs, the Secretary  
18 may—

19 “(i) terminate the agreement; and

20 “(ii) require the eligible entity to re-  
21 fund all, or part of, any payments received  
22 by the eligible entity under the ground-  
23 water conservation easement program, with  
24 interest on the payments, as determined  
25 appropriate by the Secretary.

1 “(5) CERTIFICATION OF ELIGIBLE ENTITIES.—

2 “(A) CERTIFICATION PROCESS.—The Sec-  
3 retary shall establish a process under which the  
4 Secretary may—

5 “(i) directly certify eligible entities  
6 that meet established criteria;

7 “(ii) enter into long-term agreements  
8 with certified eligible entities; and

9 “(iii) accept proposals for cost-share  
10 assistance for the purchase of groundwater  
11 conservation easements throughout the du-  
12 ration of those agreements.

13 “(B) CERTIFICATION CRITERIA.—To be  
14 certified under subparagraph (A), an eligible  
15 entity shall demonstrate to the Secretary that  
16 the eligible entity will maintain, at a minimum,  
17 for the duration of the agreement—

18 “(i) a plan for administering ground-  
19 water conservation easements that is con-  
20 sistent with the purposes of the ground-  
21 water conservation easement program;

22 “(ii) the capacity and resources to  
23 monitor and enforce groundwater conserva-  
24 tion easements; and

1           “(iii) policies and procedures to en-  
2           sure—

3                   “(I) the long-term integrity of  
4                   groundwater conservation easements;

5                   “(II) timely completion of acqui-  
6                   sitions of groundwater conservation  
7                   easements; and

8                   “(III) timely and complete eval-  
9                   uation and reporting to the Secretary  
10                  with respect to the use of funds pro-  
11                  vided under the groundwater con-  
12                  servation easement program.

13           “(C) REVIEW AND REVISION.—

14                   “(i) REVIEW.—The Secretary shall  
15                   conduct a review of eligible entities cer-  
16                   tified under subparagraph (A) not less fre-  
17                   quently than once every 3 years to ensure  
18                   that the eligible entities are meeting the  
19                   criteria established under subparagraph  
20                   (B).

21                   “(ii) REVOCATION.—If the Secretary  
22                   finds that a certified eligible entity no  
23                   longer meets the criteria established under  
24                   subparagraph (B), the Secretary may—

1                   “(I) allow the certified eligible  
2                   entity a specified period of time, but  
3                   not less than 180 days, during which  
4                   to take such actions as may be nec-  
5                   essary to meet the criteria; and

6                   “(II) revoke the certification of  
7                   the eligible entity, if, after that speci-  
8                   fied period of time, the certified eligi-  
9                   ble entity does not meet the criteria.

10           “(f) GEOGRAPHIC SCOPE.—The Secretary may only  
11 enroll eligible water rights or eligible land under this sec-  
12 tion in regions—

13                   “(1) experiencing significant groundwater de-  
14                   pletion, as determined by the Secretary consistent  
15                   with data of the United States Geological Survey;  
16                   and

17                   “(2) where groundwater monitoring and permit-  
18                   ting exists through the State, a local government, or  
19                   a groundwater management district.

20           “(g) METHOD OF ENROLLMENT.—The Secretary  
21 shall enroll eligible water rights and eligible land under  
22 this section through the use of—

23                   “(1) permanent easements; or

24                   “(2) easements for the maximum duration al-  
25                   lowed under applicable State laws.



1       “(h) TECHNICAL ASSISTANCE.—The Secretary may  
2 provide technical assistance, if requested, to assist in—

3               “(1) compliance with the terms and conditions  
4 of groundwater conservation easements; and

5               “(2) implementation of an approved ground-  
6 water conservation easement plan described in sub-  
7 section (e)(4)(C)(iv).”.

8 **SEC. 3. ADJUSTED GROSS INCOME LIMITATION.**

9       Section 1001D of the Food Security Act of 1985 (7  
10 U.S.C. 1308–3a) is amended—

11               (1) in subsection (a)(1)—

12                       (A) by striking “In this” and inserting the  
13 following:

14                               “(A) IN GENERAL.—In this”; and

15                               (B) by adding at the end the following:

16                               “(B) EXCLUSION.—In this section, the  
17 term ‘average adjusted gross income’ does not  
18 include any income received by a person or legal  
19 entity that is a landowner of eligible land (as  
20 defined in section 1265A) as compensation for  
21 the purchase of an agricultural land easement  
22 under subtitle H.”; and

23               (2) in subsection (b)(3), by inserting “, or aqui-  
24 fer recovery or a permanent reduction in consump-

1       tive use of water would be achieved,” after “pro-  
2       tected”.

○