

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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Mr. BENNET (for himself and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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”.

6 **SEC. 2. GROUNDWATER CONSERVATION EASEMENT PRO-**  
7 **GRAM.**

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

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

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

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

6 “(5) facilitate reductions in groundwater con-  
7 sumption to support local, regional, or State ground-  
8 water management.”.

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

12 **“SEC. 1265E. GROUNDWATER CONSERVATION EASEMENT**  
13 **PROGRAM.**

14 “(a) DEFINITIONS.—In this section:

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

17 “(A) an agency of State or local govern-  
18 ment;

19 “(B) an Indian Tribe; or

20 “(C) an organization described in section  
21 1265A(3)(B).

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

1 “(A) cropland;

2 “(B) grassland;

3 “(C) rangeland;

4 “(D) pasture land;

5 “(E) nonindustrial private forest land; and

6 “(F) other agricultural land.

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

9 “(A) owned or controlled by 1 or more pri-  
10 vate, governmental, or Tribal landowners to  
11 groundwater that has been used on eligible  
12 land; and

13 “(B) subject to a pending offer for the  
14 purchase of a groundwater conservation ease-  
15 ment from an eligible entity, the purchase of  
16 which would—

17 “(i) promote reduced groundwater  
18 consumption and reduced reliance on  
19 groundwater; and

20 “(ii) advance local, regional, or State  
21 groundwater management consistent with  
22 the purposes of the groundwater conserva-  
23 tion easement program.

24 “(4) GROUNDWATER CONSERVATION EASE-  
25 MENT.—

1           “(A) IN GENERAL.—The term ‘ground-  
2 water conservation easement’ means an ease-  
3 ment or other interest in eligible water rights  
4 that—

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

10           “(ii) includes restrictions on the con-  
11 sumption of groundwater related to the  
12 historical withdrawals of the groundwater  
13 of the landowner associated with the en-  
14 tirety of the eligible land associated with  
15 the eligible water rights; and

16           “(iii) expressly permits the landowner  
17 the right to continue agricultural produc-  
18 tion and other uses compatible with re-  
19 duced groundwater consumption, con-  
20 sistent with the legally permissible use and  
21 administration of the water rights by the  
22 applicable State.

23           “(B) ELIGIBLE LAND.—An easement or  
24 other interest described in subparagraph (A)  
25 may include eligible land associated with the eli-

1           gible water rights described in that subpara-  
2           graph, subject to the choice of the owner of the  
3           eligible land, consistent with applicable State  
4           law.

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

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

13               “(1) to promote the conservation and reduction  
14               in consumption of groundwater resources, including  
15               the recharging of declining aquifers, while allowing  
16               for continued agricultural production and other uses;

17               “(2) to support landowners in the adaptation  
18               to, and reduction in reliance on, declining ground-  
19               water resources; and

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

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

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

3           “(2) technical assistance to implement the  
4           groundwater conservation easement program.

5           “(e) COST-SHARE ASSISTANCE.—

6           “(1) IN GENERAL.—The Secretary shall encour-  
7           age conservation of groundwater resources through  
8           cost-share assistance to eligible entities for pur-  
9           chasing groundwater conservation easements.

10          “(2) SCOPE OF ASSISTANCE AVAILABLE.—

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

13           “(i) subject to subparagraph (D), a  
14           Federal share determined by the Secretary  
15           of an amount not to exceed 65 percent of  
16           the fair market value of the groundwater  
17           conservation easement, as determined  
18           under subparagraph (B); and

19           “(ii) an additional payment in an  
20           amount not to exceed 5 percent of the  
21           Federal share determined under clause (i)  
22           for costs associated with securing a deed to  
23           the groundwater conservation easement,  
24           including the costs of valuation, survey, in-  
25           spection, and title.

1           “(B) FAIR MARKET VALUE.—The fair  
2 market value of a groundwater conservation  
3 easement shall be determined by the Secretary  
4 using—

5           “(i) the Uniform Standards of Profes-  
6 sional Appraisal Practice;

7           “(ii) an areawide market analysis or  
8 survey;

9           “(iii) another industry-approved meth-  
10 od;

11           “(iv) a methodology used by another  
12 Federal agency;

13           “(v) a model for valuation developed  
14 by a research institution; or

15           “(vi) a method of valuing ecosystem  
16 services associated with protected water  
17 rights.

18           “(C) REIMBURSABLE COSTS.—

19           “(i) IN GENERAL.—Except as pro-  
20 vided in clause (ii), the Secretary shall pro-  
21 vide a payment under subparagraph (A)(ii)  
22 to an eligible entity as a reimbursement  
23 after the costs described in that subpara-  
24 graph are incurred by the eligible entity.

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

9           “(D) LOWER FEDERAL SHARE OPTION.—

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

17           “(ii) NO RIGHT OF ENFORCEMENT.—  
18 Notwithstanding paragraph (4)(C)(iii), an  
19 agreement with respect to which an eligible  
20 entity makes the election under clause (i)  
21 shall not include a right of enforcement for  
22 the Secretary.

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



1 “(i) cash resources;

2 “(ii) a charitable donation or qualified  
3 conservation contribution (as defined in  
4 section 170(h) of the Internal Revenue  
5 Code of 1986) from the landowner from  
6 which the groundwater conservation ease-  
7 ment will be purchased;

8 “(iii) costs associated with securing a  
9 deed to the groundwater conservation ease-  
10 ment, including the cost of appraisal, sur-  
11 vey, inspection, and title; and

12 “(iv) other costs, as determined by the  
13 Secretary.

14 “(3) EVALUATION AND RANKING OF APPLICA-  
15 TIONS.—

16 “(A) CRITERIA.—The Secretary shall es-  
17 tablish evaluation and ranking criteria to maxi-  
18 mize the benefit of Federal investment under  
19 the groundwater conservation easement pro-  
20 gram.

21 “(B) CONSIDERATIONS.—In establishing  
22 the criteria under subparagraph (A), the Sec-  
23 retary shall emphasize support for—

24 “(i) maintaining or enhancing ground-  
25 water-dependent ecosystems; and



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

3                   “(C) MINIMUM TERMS AND CONDITIONS.—  
4                   An eligible entity shall be authorized to use  
5                   such terms and conditions for groundwater con-  
6                   servation easements as the eligible entity may  
7                   establish, subject to the condition that the Sec-  
8                   retary shall determine that those terms and  
9                   conditions—

10                   “(i) are consistent with the purposes  
11                   of the groundwater conservation easement  
12                   program;

13                   “(ii) permit effective enforcement of  
14                   the conservation purposes of the ground-  
15                   water conservation easements, including—

16                   “(I) a mechanism for the meas-  
17                   urement of groundwater pumping re-  
18                   ductions; and

19                   “(II) the ability to enforce those  
20                   reductions under relevant State law;

21                   “(iii) except as provided in paragraph  
22                   (2)(D)(ii), include a right of enforcement  
23                   for the Secretary, which may be used only  
24                   if the terms of the groundwater conserva-  
25                   tion easement are not enforced by the

1 holder of the groundwater conservation  
2 easement; and

3 “(iv) subject the eligible water rights  
4 and eligible land, if applicable, in which an  
5 interest is purchased to a groundwater  
6 conservation easement plan that includes—

7 “(I) a description of the activities  
8 that demonstrate protection of soil re-  
9 sources and reduced groundwater use  
10 and meet any other conservation pur-  
11 poses for which the groundwater con-  
12 servation easement was acquired;

13 “(II) a groundwater conservation  
14 plan, where appropriate, that includes,  
15 at the option of the Secretary, activi-  
16 ties that will help maintain or enhance  
17 groundwater-dependent ecosystems;  
18 and

19 “(III) any other provisions that  
20 the Secretary determines to be nec-  
21 essary to accomplish the purposes of  
22 the groundwater conservation ease-  
23 ment program.

24 “(D) SUBSTITUTION OF QUALIFIED  
25 PROJECTS.—An agreement under this para-

1 graph shall allow, on mutual agreement of the  
2 parties, substitution of qualified projects that  
3 are identified at the time of the proposed sub-  
4 stitution.

5 “(E) EFFECT OF VIOLATION.—If a viola-  
6 tion of a term or condition of an agreement  
7 under this paragraph occurs, the Secretary  
8 may—

9 “(i) terminate the agreement; and

10 “(ii) require the eligible entity to re-  
11 fund all, or part of, any payments received  
12 by the eligible entity under the ground-  
13 water conservation easement program, with  
14 interest on the payments, as determined  
15 appropriate by the Secretary.

16 “(5) CERTIFICATION OF ELIGIBLE ENTITIES.—

17 “(A) CERTIFICATION PROCESS.—The Sec-  
18 retary shall establish a process under which the  
19 Secretary may—

20 “(i) directly certify eligible entities  
21 that meet established criteria;

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

24 “(iii) accept proposals for cost-share  
25 assistance for the purchase of groundwater

1 conservation easements throughout the du-  
2 ration of those agreements.

3 “(B) CERTIFICATION CRITERIA.—To be  
4 certified under subparagraph (A), an eligible  
5 entity shall demonstrate to the Secretary that  
6 the eligible entity will maintain, at a minimum,  
7 for the duration of the agreement—

8 “(i) a plan for administering ground-  
9 water conservation easements that is con-  
10 sistent with the purposes of the ground-  
11 water conservation easement program;

12 “(ii) the capacity and resources to  
13 monitor and enforce groundwater conserva-  
14 tion easements; and

15 “(iii) policies and procedures to en-  
16 sure—

17 “(I) the long-term integrity of  
18 groundwater conservation easements;

19 “(II) timely completion of acqui-  
20 sitions of groundwater conservation  
21 easements; and

22 “(III) timely and complete eval-  
23 uation and reporting to the Secretary  
24 with respect to the use of funds pro-



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

4           “(1) experiencing significant groundwater de-  
5 pletion, as determined by the Secretary consistent  
6 with data of the United States Geological Survey;  
7 and

8           “(2) where groundwater monitoring and permit-  
9 ting exists through the State, a local government, or  
10 a groundwater management district.

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

14           “(1) permanent easements; or

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

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

19           “(1) compliance with the terms and conditions  
20 of groundwater conservation easements; and

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



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

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

4 (1) in subsection (a)(1)—

5 (A) by striking “In this” and inserting the  
6 following:

7 “(A) IN GENERAL.—In this”; and

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

9 “(B) EXCLUSION.—In this section, the  
10 term ‘average adjusted gross income’ does not  
11 include any income received by a person or legal  
12 entity that is a landowner of eligible land (as  
13 defined in section 1265A) as compensation for  
14 the purchase of an agricultural land easement  
15 under subtitle H.”; and

16 (2) in subsection (b)(3), by inserting “, or aqui-  
17 fer recovery or a permanent reduction in consump-  
18 tive use of water would be achieved,” after “pro-  
19 tected”.