



## **FOREST CONSERVATION EASEMENT PROGRAM ACT OF 2023: LEGISLATIVE SUMMARY**

### **Meeting a critical need at a critical time**

The Forest Conservation Easement Program Act of 2023 (S. 2631/H.R. 3424) would expand the Healthy Forests Reserve Program (HFRP) and rename it the **Forest Conservation Easement Program (FCEP)** under the conservation title of the farm bill. FCEP's purpose is to keep private forest land in forest use through conservation easements that purchase development rights from willing private and tribal landowners to prevent conversion to non-forest uses while maintaining working forests, a key strategy for protecting the U.S. forest carbon sink.

FCEP is designed to: 1) significantly improve and enhance the ability of the Natural Resources Conservation Service (NRCS) to effectively conserve working forests at scale through conservation easements; 2) prioritize keeping forests as forests, which will continue to provide a multitude of environmental, economic, and societal benefits; 3) help landowners restore, enhance, and protect habitat for at-risk species while increasing carbon sequestration; and 4) provide landowners with two proven options for placing voluntary conservation easements on their land, with one held by the federal government and one held by eligible entities. It accomplishes this via two program components: Forest Land Easements (modeled after Agricultural Land Easements under the Agricultural Conservation Easement Program, or ACEP-ALE) and Forest Reserve Easements (as the successor to HFRP).

Under **Forest Land Easements (FLE)**, eligible entities – conservation organizations (such as land trusts), state and local agencies, and tribes – will be able to purchase working forest conservation easements from willing private and tribal forest landowners, while allowing the landowners to continue working forest production and related uses. NRCS will provide up to 50 percent of the fair market value (or 75 percent under certain conditions) for the purchase of the easement, with the remaining share coming from any combination of cash resources from the entity, landowner donation/bargain sale, and costs associated with the acquisition of the easement.

Under **Forest Reserve Easements (FRE)**, NRCS will be able to purchase conservation easements from willing private and tribal forest landowners and help those landowners restore, enhance, and protect forest resources, while allowing the landowners to continue working forest production and related uses. Enrolled land will be subject to a forest reserve easement plan that describes the practices and measures necessary to restore, maintain, and enhance habitat for at-risk species. NRCS will purchase permanent easements from the landowner for fair market value of the easement and will provide financial assistance up to 100 percent of the eligible costs of practices and measures identified in the forest reserve easement plan. Financial assistance for 30-year easements and contracts will be 75 percent of that which would be paid for a permanent easement.

FCEP uses the overall ACEP statute as a basis for the general sections, ACEP-Agricultural Land Easements (ALE) for Forest Land Easements, and a combination of the HFRP statute and ACEP-Wetland Reserve Easements language as the basis for Forest Reserve Easements.

## Forest Land Easements (FLE)

- Provides funding for eligible entities to purchase forest land easements (FLE) on eligible land and develop a voluntary forest management plan.
  - FLEs protect the natural resources and the forest nature of the eligible land and permit the landowner to continue working forest production and related uses.
  - The easements will be permanent or for the maximum duration allowed under state law.
  - Eligible entities include state, local, and tribal agencies, and NGOs/land trusts.
  - Eligible land is private or tribal forest land, or private or tribal land being restored to forest land, with NGO-owned land being included as eligible private land. The land must be subject to a pending offer for purchase of a forest land easement from an eligible entity, and the enrollment of the land must protect forest uses and related conservation values or further a state/local policy consistent with the purposes of the program.
- NRCS will provide 50 percent of fair market value (FMV) of the easement.
  - The non-federal share of the easement must equal the share provided by the Secretary and may include any combination of cash resources, charitable donation from the landowner, and costs associated with securing the deed.
  - Exceptions: for “forests of special environmental significance” or for “beginning, socially disadvantaged, limited resource, or veteran eligible forest landowner,” the Secretary may provide up to 75 percent of FMV.
- The Secretary shall establish evaluation and ranking criteria for FLE.
  - Priority is given to applications that maintain the viability of working forest lands and have a forest management plan developed for the land at the time of application. That forest management plan could be a forest stewardship plan, another plan approved by a state agency, a plan developed under a third-party certification system, or another plan determined appropriate by the Secretary.
  - The Secretary is directed to emphasize support for protecting forest uses and related conservation values, reducing fragmentation, and maximizing areas protected from conversion to non-forest uses, and may adjust criteria to account for geographic differences.
- Agreements with eligible entities
  - Similar to ACEP-ALE, the Secretary will enter into agreements with eligible entities to provide cost-share assistance.
  - Minimum deed terms and conditions are provided to ensure that easements are consistent with purposes of the program and the forestry activities to be conducted and include a right of enforcement for the Secretary if the terms and conditions are not enforced by the eligible entity. These provisions mirror those of ACEP-ALE.
  - If the eligible land does not have a forest management plan at the time of application, prior to the acquisition of a FLE, the landowner must develop, in partnership with the eligible entity, a voluntary forest management plan, which could be a forest stewardship plan, another plan approved by a state agency, a plan developed under a third-party certification system, or another plan determined appropriate by the Secretary. NRCS can reimburse for the cost of developing the plan.
- Certification of eligible entities
  - Similar to ACEP-ALE, the Secretary shall also establish a process to certify eligible entities so that a certified entity may use its own terms and conditions for easements.

- Certification criteria includes entities accredited by the Land Trust Accreditation Commission (or an equivalent accrediting body) and state agencies with authority for conserving forest land.

### **Forest Reserve Easements (FRE)**

- Provides funding for NRCS to purchase forest reserve easements (FRE) on eligible land and provides assistance for related forest reserve easement plans.
  - FREs protect the natural resources and the forest nature of the eligible land and permit the landowner to continue working forest production and related uses consistent with the forest reserve easement plan.
  - Eligible land is private or tribal forest land, or private or tribal land being restored to forest land, with NGO-owned land being included as eligible private land. The enrollment of the land must maintain, restore, enhance, or otherwise measurably increase likelihood of recovery of threatened and endangered species or improve the well-being of other at-risk species.
  - NRCS may purchase permanent easements, 30-year easements – or for land owned by Indian tribes, 30-year contracts – or easements for the maximum duration allowed under state law. No more than 10 percent of FCEP funds may be used for 30-year easements.
- Compensation is equal to the fair market value of the easement for permanent easements, or up to 75 percent of FMV for 30-year easements or contracts.
- The Secretary shall establish evaluation and ranking criteria for offers from landowners.
  - Priority is given to land that provides the greatest benefit to threatened and endangered species and, secondarily, candidate species and species of greatest conservation need.
  - Other considerations may include improving biological diversity, restoring native forest ecosystems, conserving forest land that provides habitat for at-risk species, reducing fragmentation, and increasing carbon sequestration.
- Land enrolled in FRE will be subject to a FRE plan that identifies activities, practices, and measures necessary to restore, maintain, and enhance habitat for at-risk species.
  - NRCS will provide financial assistance to carry out the practices and measures identified in the FRE plan up to 100 percent of eligible costs for permanent easements, and up to 75 percent for 30-year easements or contracts, or easements for the maximum duration allowed under state law. Such payments may not exceed \$500,000 per easement or contract. The Secretary shall not prohibit owners of land enrolled in a forest reserve easement from being eligible for any other USDA or other Federal program to implement practices and measures not funded by FCEP payments.
- Landowners will have the option to enter into safe harbor agreements or similar assurances to avoid future regulatory restrictions on the use of that land under the Endangered Species Act.
- The Secretary may enter into contracts/agreements with states, NGOs, tribes, or private entities to provide technical assistance with implementation of the program, including enrollment, restoration, enhancement, or maintenance of an easement.

### **Administration**

- The Secretary is directed to use, to the maximum extent practicable, 10 percent of program funds in each fiscal year to enroll land owned by historically underserved landowners. Any unused funds under this provision in any fiscal year will be made available for enrollment of all eligible land.

- Sections 1001 through 1001F of the Food Security Act (including adjusted gross income and other payment limitations) shall not apply to the Forest Conservation Easement Program.
- The Secretary is directed to develop a streamlined process for application and enrollment for forest landowners.
- The Secretary may not prohibit participants from participating in or receiving compensation from an environmental services market if a purpose of the market is to facilitate additional conservation benefits.

#### **Funding**

- H.R. 3424:
  - Authorizes \$100,000,000 in mandatory funds annually from FY2024-FY2028.
  - Includes a “Sense of Congress” that the costs of carrying out this Act shall be offset.
- S. 2631:
  - Authorizes \$100,000,000 in discretionary funds annually from FY2024-FY2028.