

105TH CONGRESS
1ST SESSION

S. 235

To amend the Internal Revenue Code of 1986 to encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1997

Ms. MOSELEY-BRAUN (for herself, Mr. ABRAHAM, Mr. D'AMATO, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. DASCHLE, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites.

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. AMENDMENT OF 1986 CODE.**

4 Except as otherwise expressly provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion, the reference shall be considered to be made to a

1 section or other provision of the Internal Revenue Code
2 of 1986.

3 **TITLE I—ADDITIONAL** 4 **EMPOWERMENT ZONES**

5 **SEC. 101. ADDITIONAL EMPOWERMENT ZONES.**

6 (a) IN GENERAL.—Paragraph (2) of section 1391(b)
7 (relating to designations of empowerment zones and enter-
8 prise communities) is amended—

9 (1) by striking “9” and inserting “11”,

10 (2) by striking “6” and inserting “8”, and

11 (3) by striking “750,000” and inserting
12 “1,000,000”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act, except that designations of new empowerment
16 zones made pursuant to such amendments shall be made
17 during the 180-day period beginning on the date of the
18 enactment of this Act.

19 **TITLE II—NEW EMPOWERMENT** 20 **ZONES AND ENTERPRISE** 21 **COMMUNITIES**

22 **SEC. 201. DESIGNATION OF ADDITIONAL EMPOWERMENT** 23 **ZONES AND ENTERPRISE COMMUNITIES.**

24 (a) IN GENERAL.—Section 1391 (relating to designa-
25 tion procedure for empowerment zones and enterprise

1 communities) is amended by adding at the end the follow-
 2 ing new subsection:

3 “(g) ADDITIONAL DESIGNATIONS PERMITTED.—

4 “(1) IN GENERAL.—In addition to the areas
 5 designated under subsection (a)—

6 “(A) ENTERPRISE COMMUNITIES.—The
 7 appropriate Secretaries may designate in the
 8 aggregate an additional 80 nominated areas as
 9 enterprise communities under this section, sub-
 10 ject to the availability of eligible nominated
 11 areas. Of that number, not more than 50 may
 12 be designated in urban areas and not more
 13 than 30 may be designated in rural areas.

14 “(B) EMPOWERMENT ZONES.—The appro-
 15 priate Secretaries may designate in the aggre-
 16 gate an additional 20 nominated areas as
 17 empowerment zones under this section, subject
 18 to the availability of eligible nominated areas.
 19 Of that number, not more than 15 may be des-
 20 ignated in urban areas and not more than 5
 21 may be designated in rural areas.

22 “(2) PERIOD DESIGNATIONS MAY BE MADE.—A
 23 designation may be made under this subsection after
 24 the date of the enactment of this subsection and be-
 25 fore January 1, 1999.

1 “(3) MODIFICATIONS TO ELIGIBILITY CRITERIA,
2 ETC.—

3 “(A) POVERTY RATE REQUIREMENT.—

4 “(i) IN GENERAL.—A nominated area
5 shall be eligible for designation under this
6 subsection only if the poverty rate for each
7 population census tract within the nomi-
8 nated area is not less than 20 percent and
9 the poverty rate for at least 90 percent of
10 the population census tracts within the
11 nominated area is not less than 25 per-
12 cent.

13 “(ii) TREATMENT OF CENSUS TRACTS
14 WITH SMALL POPULATIONS.—A population
15 census tract with a population of less than
16 2,000 shall be treated as having a poverty
17 rate of not less than 25 percent if—

18 “(I) more than 75 percent of
19 such tract is zoned for commercial or
20 industrial use, and

21 “(II) such tract is contiguous to
22 1 or more other population census
23 tracts which have a poverty rate of
24 not less than 25 percent (determined
25 without regard to this clause).

1 “(iii) EXCEPTION FOR DEVELOPABLE
 2 SITES.—Clause (i) shall not apply to up to
 3 3 noncontiguous parcels in a nominated
 4 area which may be developed for commer-
 5 cial or industrial purposes. The aggregate
 6 area of noncontiguous parcels to which the
 7 preceding sentence applies with respect to
 8 any nominated area shall not exceed 1,000
 9 acres (2,000 acres in the case of an
 10 empowerment zone).

11 “(iv) CERTAIN PROVISIONS NOT TO
 12 APPLY.—Section 1392(a)(4) (and so much
 13 of paragraphs (1) and (2) of section
 14 1392(b) as relate to section 1392(a)(4))
 15 shall not apply to an area nominated for
 16 designation under this subsection.

17 “(v) SPECIAL RULE FOR RURAL
 18 EMPOWERMENT ZONES AND ENTERPRISE
 19 COMMUNITIES.—The Secretary of Agri-
 20 culture may designate not more than 1
 21 empowerment zone, and not more than 5
 22 enterprise communities, in rural areas
 23 without regard to clause (i) if such areas
 24 satisfy emigration criteria specified by the
 25 Secretary of Agriculture.

1 “(B) SIZE LIMITATION.—

2 “(i) IN GENERAL.—The parcels de-
3 scribed in subparagraph (A)(iii) shall not
4 be taken into account in determining
5 whether the requirement of subparagraph
6 (A) or (B) of section 1392(a)(3) is met.

7 “(ii) SPECIAL RULE FOR RURAL
8 AREAS.—If a population census tract (or
9 equivalent division under section
10 1392(b)(4)) in a rural area exceeds 1,000
11 square miles or includes a substantial
12 amount of land owned by the Federal,
13 State, or local government, the nominated
14 area may exclude such excess square mile-
15 age or governmentally owned land and the
16 exclusion of that area will not be treated
17 as violating the continuous boundary re-
18 quirement of section 1392(a)(3)(B).

19 “(C) AGGREGATE POPULATION LIMITA-
20 TION.—The aggregate population limitation
21 under the last sentence of subsection (b)(2)
22 shall not apply to a designation under para-
23 graph (1)(B).

1 “(D) PREVIOUSLY DESIGNATED ENTER-
 2 PRISE COMMUNITIES MAY BE INCLUDED.—Sub-
 3 section (e)(5) shall not apply to any enterprise
 4 community designated under subsection (a) that
 5 is also nominated for designation under this
 6 subsection.

7 “(E) INDIAN RESERVATIONS MAY BE NOM-
 8 INATED.—

9 “(i) IN GENERAL.—Section 1393(a)(4)
 10 shall not apply to an area nominated for
 11 designation under this subsection.

12 “(ii) SPECIAL RULE.—An area in an
 13 Indian reservation shall be treated as nom-
 14 inated by a State and a local government
 15 if it is nominated by the reservation gov-
 16 erning body (as determined by the Sec-
 17 retary of Interior).”

18 (b) EMPLOYMENT CREDIT NOT TO APPLY TO NEW
 19 EMPOWERMENT ZONES.—Section 1396 (relating to
 20 empowerment zone employment credit) is amended by
 21 adding at the end the following new subsection:

22 “(e) CREDIT NOT TO APPLY TO EMPOWERMENT
 23 ZONES DESIGNATED UNDER SECTION 1391(g).—This
 24 section shall be applied without regard to any
 25 empowerment zone designated under section 1391(g).”

1 (c) INCREASED EXPENSING UNDER SECTION 179
 2 NOT TO APPLY IN DEVELOPABLE SITES.—Section 1397A
 3 (relating to increase in expensing under section 179) is
 4 amended by adding at the end the following new sub-
 5 section:

6 “(c) LIMITATION.—For purposes of this section,
 7 qualified zone property shall not include any property sub-
 8 stantially all of the use of which is in any parcel described
 9 in section 1391(g)(3)(A)(iii).”

10 (d) CONFORMING AMENDMENTS.—

11 (1) Subsections (e) and (f) of section 1391 are
 12 each amended by striking “subsection (a)” and in-
 13 serting “this section”.

14 (2) Section 1391(c) is amended by striking
 15 “this section” and inserting “subsection (a)”.

16 **SEC. 202. VOLUME CAP NOT TO APPLY TO ENTERPRISE**
 17 **ZONE FACILITY BONDS WITH RESPECT TO**
 18 **NEW EMPOWERMENT ZONES.**

19 (a) IN GENERAL.—Section 1394 (relating to tax-ex-
 20 empt enterprise zone facility bonds) is amended by adding
 21 at the end the following new subsection:

22 “(f) BONDS FOR EMPOWERMENT ZONES DES-
 23 IGNATED UNDER SECTION 1391(g).—

24 “(1) IN GENERAL.—In the case of a new
 25 empowerment zone facility bond—

1 “(A) such bond shall not be treated as a
2 private activity bond for purposes of section
3 146, and

4 “(B) subsection (c) of this section shall not
5 apply.

6 “(2) LIMITATION ON AMOUNT OF BONDS.—

7 “(A) IN GENERAL.—Paragraph (1) shall
8 apply to a new empowerment zone facility bond
9 only if such bond is designated for purposes of
10 this subsection by the local government which
11 nominated the area to which such bond relates.

12 “(B) LIMITATION ON BONDS DES-
13 IGNATED.—The aggregate face amount of
14 bonds which may be designated under subpara-
15 graph (A) with respect to any empowerment
16 zone shall not exceed—

17 “(i) \$60,000,000 if such zone is in a
18 rural area,

19 “(ii) \$130,000,000 if such zone is in
20 an urban area and the zone has a popu-
21 lation of less than 100,000, and

22 “(iii) \$230,000,000 if such zone is in
23 an urban area and the zone has a popu-
24 lation of at least 100,000.

25 “(C) SPECIAL RULES.—

1 “(i) COORDINATION WITH LIMITATION
 2 IN SUBSECTION (c).—Bonds to which para-
 3 graph (1) applies shall not be taken into
 4 account in applying the limitation of sub-
 5 section (c) to other bonds.

6 “(ii) CURRENT REFUNDING NOT
 7 TAKEN INTO ACCOUNT.—In the case of a
 8 refunding (or series of refundings) of a
 9 bond designated under this paragraph, the
 10 refunding obligation shall be treated as
 11 designated under this paragraph (and shall
 12 not be taken into account in applying sub-
 13 paragraph (B)) if—

14 “(I) the amount of the refunding
 15 bond does not exceed the outstanding
 16 amount of the refunded bond, and

17 “(II) the refunded bond is re-
 18 deemed not later than 90 days after
 19 the date of issuance of the refunding
 20 bond.

21 “(3) NEW EMPOWERMENT ZONE FACILITY
 22 BOND.—For purposes of this subsection, the term
 23 ‘new empowerment zone facility bond’ means any
 24 bond which would be described in subsection (a) if
 25 only empowerment zones designated under section

1 1391(g) were taken into account under sections
2 1397B and 1397C.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to obligations issued after the date
5 of the enactment of this Act.

6 **SEC. 203. MODIFICATIONS TO ENTERPRISE ZONE FACILITY**
7 **BOND RULES FOR ALL EMPOWERMENT**
8 **ZONES AND ENTERPRISE COMMUNITIES.**

9 (a) MODIFICATIONS RELATING TO ENTERPRISE
10 ZONE BUSINESS.—Paragraph (3) of section 1394(b) (de-
11 fining enterprise zone business) is amended to read as fol-
12 lows:

13 “(3) ENTERPRISE ZONE BUSINESS.—

14 “(A) IN GENERAL.—Except as modified in
15 this paragraph, the term ‘enterprise zone busi-
16 ness’ has the meaning given such term by sec-
17 tion 1397B.

18 “(B) MODIFICATIONS.—In applying sec-
19 tion 1397B for purposes of this section—

20 “(i) BUSINESSES IN ENTERPRISE
21 COMMUNITIES ELIGIBLE.—References in
22 section 1397B to empowerment zones shall
23 be treated as including references to enter-
24 prise communities.

1 “(ii) WAIVER OF REQUIREMENTS
2 DURING STARTUP PERIOD.—A business
3 shall not fail to be treated as an enterprise
4 zone business during the startup period
5 if—

6 “(I) as of the beginning of the
7 startup period, it is reasonably ex-
8 pected that such business will be an
9 enterprise zone business (as defined in
10 section 1397B as modified by this
11 paragraph) at the end of such period,
12 and

13 “(II) such business makes bona
14 fide efforts to be such a business.

15 “(iii) REDUCED REQUIREMENTS
16 AFTER TESTING PERIOD.—A business shall
17 not fail to be treated as an enterprise zone
18 business for any taxable year beginning
19 after the testing period by reason of failing
20 to meet any requirement of subsection (b)
21 or (c) of section 1397B if at least 35 per-
22 cent of the employees of such business for
23 such year are residents of an empowerment
24 zone or an enterprise community. The pre-
25 ceding sentence shall not apply to any

1 business which is not a qualified business
 2 by reason of paragraph (1), (4), or (5) of
 3 section 1397B(d).

4 “(C) DEFINITIONS RELATING TO SUBPARA-
 5 GRAPH (B).—For purposes of subparagraph
 6 (B)—

7 “(i) STARTUP PERIOD.—The term
 8 ‘startup period’ means, with respect to any
 9 property being provided for any business,
 10 the period before the first taxable year be-
 11 ginning more than 2 years after the later
 12 of—

13 “(I) the date of issuance of the
 14 issue providing such property, or

15 “(II) the date such property is
 16 first placed in service after such issu-
 17 ance (or, if earlier, the date which is
 18 3 years after the date described in
 19 subclause (I)).

20 “(ii) TESTING PERIOD.—The term
 21 ‘testing period’ means the first 3 taxable
 22 years beginning after the startup period.

1 “(D) PORTIONS OF BUSINESS MAY BE EN-
 2 TERPRISE ZONE BUSINESS.—The term ‘enter-
 3 prise zone business’ includes any trades or busi-
 4 nesses which would qualify as an enterprise
 5 zone business (determined after the modifica-
 6 tions of subparagraph (B)) if such trades or
 7 businesses were separately incorporated.”

8 (b) MODIFICATIONS RELATING TO QUALIFIED ZONE
 9 PROPERTY.—Paragraph (2) of section 1394(b) (defining
 10 qualified zone property) is amended to read as follows:

11 “(2) QUALIFIED ZONE PROPERTY.—The term
 12 ‘qualified zone property’ has the meaning given such
 13 term by section 1397C; except that—

14 “(A) the references to empowerment zones
 15 shall be treated as including references to enter-
 16 prise communities, and

17 “(B) section 1397C(a)(2) shall be applied
 18 by substituting ‘an amount equal to 15 percent
 19 of the adjusted basis’ for ‘an amount equal to
 20 the adjusted basis’.”

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to obligations issued after the date
 23 of the enactment of this Act.

1 **SEC. 204. MODIFICATIONS TO ENTERPRISE ZONE BUSINESS**

2 **DEFINITION FOR ALL EMPOWERMENT ZONES**

3 **AND ENTERPRISE COMMUNITIES.**

4 (a) IN GENERAL.—Section 1397B (defining enter-
5 prise zone business) is amended—

6 (1) by striking “80 percent” in subsections

7 (b)(2) and (c)(1) and inserting “50 percent”,

8 (2) by striking “substantially all” each place it
9 appears in subsections (b) and (c) and inserting “a
10 substantial portion”,

11 (3) by striking “, and exclusively related to,” in
12 subsections (b)(4) and (c)(3),

13 (4) by adding at the end of subsection (d)(2)
14 the following new flush sentence:

15 “For purposes of subparagraph (B), the lessor of
16 the property may rely on a lessee’s certification that
17 such lessee is an enterprise zone business.”,

18 (5) by striking “substantially all” in subsection
19 (d)(3) and inserting “at least 50 percent”, and

20 (6) by adding at the end the following new sub-
21 section:

22 “(f) TREATMENT OF BUSINESSES STRADDLING CEN-
23 SUS TRACT LINES.—For purposes of this section, if—

24 “(1) a business entity or proprietorship uses
25 real property located within an empowerment zone,

1 “(2) the business entity or proprietorship also
2 uses real property located outside the empowerment
3 zone,

4 “(3) the amount of real property described in
5 paragraph (1) is substantial compared to the
6 amount of real property described in paragraph (2),
7 and

8 “(4) the real property described in paragraph
9 (2) is contiguous to part or all of the real property
10 described in paragraph (1),

11 then all the services performed by employees, all business
12 activities, all tangible property, and all intangible property
13 of the business entity or proprietorship that occur in or
14 is located on the real property described in paragraphs (1)
15 and (2) shall be treated as occurring or situated in an
16 empowerment zone.”

17 (b) EFFECTIVE DATES.—

18 (1) IN GENERAL.—The amendments made by
19 this section shall apply to taxable years beginning on
20 or after the date of the enactment of this Act.

21 (2) SPECIAL RULE FOR ENTERPRISE ZONE FA-
22 CILITY BONDS.—For purposes of section 1394(b) of
23 the Internal Revenue Code of 1986, the amendments
24 made by this section shall apply to obligations issued
25 after the date of the enactment of this Act.

1 **TITLE III—EXPENSING OF ENVI-**
 2 **RONMENTAL REMEDIATION**
 3 **COSTS**

4 **SEC. 301. EXPENSING OF ENVIRONMENTAL REMEDIATION**
 5 **COSTS.**

6 (a) IN GENERAL.—Part VI of subchapter B of chap-
 7 ter 1 is amended by adding at the end the following new
 8 section:

9 **“SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION**
 10 **COSTS.**

11 “(a) IN GENERAL.—A taxpayer may elect to treat
 12 any qualified environmental remediation expenditure
 13 which is paid or incurred by the taxpayer as an expense
 14 which is not chargeable to capital account. Any expendi-
 15 ture which is so treated shall be allowed as a deduction
 16 for the taxable year in which it is paid or incurred.

17 “(b) QUALIFIED ENVIRONMENTAL REMEDIATION
 18 EXPENDITURE.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘qualified envi-
 20 ronmental remediation expenditure’ means any ex-
 21 penditure—

22 “(A) which is otherwise chargeable to cap-
 23 ital account, and

1 “(B) which is paid or incurred in connec-
 2 tion with the abatement or control of hazardous
 3 substances at a qualified contaminated site.

4 “(2) SPECIAL RULE FOR EXPENDITURES FOR
 5 DEPRECIABLE PROPERTY.—Such term shall not in-
 6 clude any expenditure for the acquisition of property
 7 of a character subject to the allowance for deprecia-
 8 tion which is used in connection with the abatement
 9 or control of hazardous substances at a qualified
 10 contaminated site; except that the portion of the al-
 11 lowance under section 167 for such property which
 12 is otherwise allocated to such site shall be treated as
 13 a qualified environmental remediation expenditure.

14 “(c) QUALIFIED CONTAMINATED SITE.—For pur-
 15 poses of this section—

16 “(1) QUALIFIED CONTAMINATED SITE.—

17 “(A) IN GENERAL.—The term ‘qualified
 18 contaminated site’ means any area—

19 “(i) which is held by the taxpayer for
 20 use in a trade or business or for the pro-
 21 duction of income, or which is property de-
 22 scribed in section 1221(1) in the hands of
 23 the taxpayer,

24 “(ii) which is within a targeted area,
 25 and

1 “(iii) which contains (or potentially
2 contains) any hazardous substance.

3 “(B) TAXPAYER MUST RECEIVE STATE-
4 MENT FROM STATE ENVIRONMENTAL AGEN-
5 CY.—An area shall be treated as a qualified
6 contaminated site with respect to expenditures
7 paid or incurred during any taxable year only
8 if the taxpayer receives a statement from the
9 appropriate agency of the State in which such
10 area is located that such area meets the re-
11 quirements of clauses (ii) and (iii) of subpara-
12 graph (A).

13 “(C) APPROPRIATE STATE AGENCY.— For
14 purposes of subparagraph (B), the appropriate
15 agency of a State is the agency designated by
16 the Administrator of the Environmental Protec-
17 tion Agency for purposes of this section. If no
18 agency of a State is designated under the pre-
19 ceding sentence, the appropriate agency for
20 such State shall be the Environmental Protec-
21 tion Agency.

22 “(2) TARGETED AREA.—

23 “(A) IN GENERAL.—The term ‘targeted
24 area’ means—

1 “(i) any population census tract with
2 a poverty rate of not less than 20 percent,

3 “(ii) a population census tract with a
4 population of less than 2,000 if—

5 “(I) more than 75 percent of
6 such tract is zoned for commercial or
7 industrial use, and

8 “(II) such tract is contiguous to
9 1 or more other population census
10 tracts which meet the requirement of
11 clause (i) without regard to this
12 clause,

13 “(iii) any empowerment zone or enter-
14 prise community (and any supplemental
15 zone designated on December 21, 1994),
16 and

17 “(iv) any site announced before Feb-
18 ruary 1, 1997, as being included as a
19 brownfields pilot project of the Environ-
20 mental Protection Agency.

21 “(B) NATIONAL PRIORITIES LISTED SITES
22 NOT INCLUDED.—Such term shall not include
23 any site which is on the national priorities list
24 under section 105(a)(8)(B) of the Comprehen-
25 sive Environmental Response, Compensation,

1 and Liability Act of 1980 (as in effect on the
2 date of the enactment of this section).

3 “(C) CERTAIN RULES TO APPLY.—For
4 purposes of this paragraph, the rules of sections
5 1392(b)(4) and 1393(a)(9) shall apply.

6 “(D) TREATMENT OF CERTAIN SITES.—
7 For purposes of this paragraph, a single con-
8 taminated site shall be treated as within a tar-
9 geted area if—

10 “(i) a substantial portion of the site is
11 located within a targeted area described in
12 subparagraph (A) (determined without re-
13 gard to this subparagraph), and

14 “(ii) the remaining portions are con-
15 tiguous to, but outside, such targeted area.

16 “(d) HAZARDOUS SUBSTANCE.—For purposes of this
17 section—

18 “(1) IN GENERAL.—The term ‘hazardous sub-
19 stance’ means—

20 “(A) any substance which is a hazardous
21 substance as defined in section 101(14) of the
22 Comprehensive Environmental Response, Com-
23 pensation, and Liability Act of 1980, and

1 “(B) any substance which is designated as
2 a hazardous substance under section 102 of
3 such Act.

4 “(2) EXCEPTION.—Such term shall not include
5 any substance with respect to which a removal or re-
6 medial action is not permitted under section 104 of
7 such Act by reason of subsection (a)(3) thereof.

8 “(e) DEDUCTION RECAPTURED AS ORDINARY IN-
9 COME ON SALE, ETC.—Solely for purposes of section
10 1245, in the case of property to which a qualified environ-
11 mental remediation expenditure would have been capital-
12 ized but for this section—

13 “(1) the deduction allowed by this section for
14 such expenditure shall be treated as a deduction for
15 depreciation, and

16 “(2) such property (if not otherwise section
17 1245 property) shall be treated as section 1245
18 property solely for purposes of applying section 1245
19 to such deduction.

20 “(f) COORDINATION WITH OTHER PROVISIONS.—
21 Sections 280B and 468 shall not apply to amounts which
22 are treated as expenses under this section.

23 “(g) REGULATIONS.—The Secretary shall prescribe
24 such regulations as may be necessary or appropriate to
25 carry out the purposes of this section.”

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for part VI of subchapter B of chapter 1 is amended by
3 adding at the end the following new item:

“Sec. 198. Expensing of environmental remediation costs.”

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to expenditures paid or incurred
6 after the date of the enactment of this Act, in taxable
7 years ending after such date.

○