

105TH CONGRESS
2D SESSION

H. R. 4094

To provide for comprehensive brownfields assessment, cleanup, and
redevelopment.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1998

Mr. FRANKS New of Jersey (for himself and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for comprehensive brownfields assessment,
cleanup, and redevelopment.

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 “Brownfield Redevelop-
5 ment and Environmental Revitalization Act of 1998”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and purpose.

TITLE I—FINANCIAL SUPPORT FOR BROWNFIELD SITE
REMEDIATION

- Sec. 101. Grants for inventories, site assessments, and other pre-cleanup activities.
- Sec. 102. Grants for revolving loan programs.
- Sec. 103. Environmental cleanup grants.
- Sec. 104. Limitations on use of funds.
- Sec. 105. Effect on other laws.
- Sec. 106. Regulations.
- Sec. 107. Authorizations of appropriations.

TITLE II—FINANCIAL SUPPORT FOR BROWNFIELD SITE
PREVENTION AND REDEVELOPMENT

- Sec. 201. Environmental remediation tax credit.
- Sec. 202. Brownfields IRA.
- Sec. 203. Issuance of bond to finance tax-exempt environmental remediation of contaminated sites.
- Sec. 204. Small business administration set-aside for brownfield prevention and redevelopment projects under section 504 development company program.
- Sec. 205. Promotion of small business investment companies for brownfield activities.

1 SEC. 3. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds the following:

3 (1) Abandoned and underutilized commercial
4 and industrial property is often avoided by investors
5 and developers because of real or perceived contami-
6 nation on-site.

7 (2) Reuse of these sites requires pre-cleanup as-
8 sistance as well as financial support for redevelop-
9 ment activities.

10 (b) PURPOSE.—The purpose of this Act is to provide
11 public sector support for brownfield redevelopment and to
12 further enable the private sector to invest and conduct
13 cleanup and redevelopment activities.

1 **TITLE I—FINANCIAL SUPPORT**
2 **FOR BROWNFIELD SITE RE-**
3 **MEDIATION**

4 **SEC. 101. GRANTS FOR INVENTORIES, SITE ASSESSMENTS,**
5 **AND OTHER PRE-CLEANUP ACTIVITIES.**

6 (a) IN GENERAL.—The Administrator shall establish
7 a program to award grants to States and local govern-
8 ments to inventory brownfield sites and to conduct site
9 assessments and other pre-cleanup activities relating to
10 such sites, including site identification, site characteriza-
11 tion, and the planning and design of response actions for
12 such sites.

13 (b) SCOPE OF PROGRAM.—

14 (1) GRANT AWARDS.—To carry out subsection
15 (a), the Administrator may, on approval of an appli-
16 cation, provide financial assistance to a State or
17 local government.

18 (2) GRANT APPLICATION.—An application for a
19 grant under this section shall include, to the extent
20 practicable, each of the following:

21 (A) An identification of the brownfield
22 sites for which assistance is sought and a de-
23 scription of the effect of the brownfield sites on
24 the community.

1 (B) A description of the need of the appli-
2 cant for Federal financial assistance to inven-
3 tory brownfield sites and to conduct site assess-
4 ments or other pre-cleanup activities at such
5 sites.

6 (C) A demonstration of the potential of the
7 grant assistance to stimulate economic develop-
8 ment or create recreational space.

9 (D) A description of the local commitment
10 as of the date of the application, which shall in-
11 clude a community involvement plan that dem-
12 onstrates meaningful community involvement.

13 (E) A plan that shows how the site identi-
14 fication, site assessment, or other pre-cleanup
15 activities will be implemented.

16 (F) A statement on the long-term benefits
17 of the proposed project.

18 (G) Such other factors as the Adminis-
19 trator considers relevant to carry out this title.

20 (3) APPROVAL OF APPLICATION.—

21 (A) IN GENERAL.—In making a decision
22 whether to approve an application under para-
23 graph (1), the Administrator shall—

1 (i) consider the need of the State or
2 local government for Federal financial as-
3 sistance to carry out this section;

4 (ii) consider the ability of the appli-
5 cant to carry out or ensure an inventory,
6 site assessment, or other pre-cleanup activ-
7 ity under this section; and

8 (iii) consider such other factors as the
9 Administrator considers relevant to carry
10 out this section.

11 (B) GRANT CONDITIONS.—As a condition
12 of awarding a grant under this section, the Ad-
13 ministrator may, on the basis of the criteria
14 considered under subparagraph (A), attach
15 such conditions to the grant as the Adminis-
16 trator determines appropriate.

17 (4) GRANT AMOUNT.—The amount of a grant
18 awarded to any State or local government under
19 subsection (a) for inventory, site assessment, and
20 other pre-cleanup activities with respect to 1 or more
21 brownfield sites shall not exceed \$200,000, except
22 that the Administrator may increase the amount in
23 special circumstances as determined by the Adminis-
24 trator.

1 (5) TERMINATION OF GRANTS.—If the Admin-
2 istrator determines that a State or local government
3 that receives a grant under this subsection is in vio-
4 lation of a condition of a grant referred to in para-
5 graph (3)(B), the Administrator may terminate the
6 grant made to the State or local government and re-
7 quire full or partial repayment of the grant.

8 **SEC. 102. GRANTS FOR REVOLVING LOAN PROGRAMS.**

9 (a) IN GENERAL.—

10 (1) ESTABLISHMENT.—The Administrator shall
11 establish a program to award grants to be used by
12 States and local governments to capitalize revolving
13 loan funds for the cleanup of brownfield sites.

14 (2) LOANS.—The loans may be provided by the
15 local government, or by the State on behalf of a local
16 government, to finance cleanups of brownfield sites
17 by the local government, or by an owner or a pro-
18 spective purchaser of a brownfield site (including a
19 local government) at which a cleanup is being con-
20 ducted or is proposed to be conducted.

21 (b) SCOPE OF PROGRAM.—

22 (1) IN GENERAL.—

23 (A) GRANTS.—In carrying out subsection
24 (a), the Administrator may award a grant to a
25 State or local government that submits an ap-

1 plication to the Administrator that is approved
2 by the Administrator.

3 (B) USE OF GRANT.—The grant shall be
4 used by the State or local government to cap-
5 italize a revolving loan fund to be used for
6 cleanup of one or more brownfield sites.

7 (C) GRANT APPLICATION.—An application
8 for a grant under this section shall be in such
9 form as the Administrator determines appro-
10 prium. The application shall include the follow-
11 ing:

12 (i) Evidence that the grant applicant
13 has the financial controls and resources to
14 administer a revolving loan fund in accord-
15 ance with this title.

16 (ii) Provisions that—

17 (I) ensure that the grant appli-
18 cant has the ability to monitor the use
19 of funds provided to loan recipients
20 under this title;

21 (II) ensure that any cleanup con-
22 ducted by the applicant is protective
23 of human health and the environment;
24 and

1 (III) ensure that any cleanup
2 funded under this Act will comply
3 with all laws that apply to the clean-
4 up.

5 (iii) Identification of the criteria to be
6 used by the State or local government in
7 providing for loans under the program.
8 The criteria shall include the financial
9 standing of the applicants for the loans,
10 the use to which the loans will be put, the
11 provisions to be used to ensure repayment
12 of the loan funds, the proposed method
13 and anticipated period of time required to
14 clean up the environmental contamination
15 at the brownfield site, and such other cri-
16 teria as the Administrator considers appro-
17 priate.

18 (2) GRANT APPROVAL.—In determining wheth-
19 er to award a grant under this section, the Adminis-
20 trator shall consider—

21 (A) the need of the local government for fi-
22 nancial assistance to clean up brownfield sites
23 that are the subject of the application, taking
24 into consideration the financial resources avail-
25 able to the local government;

1 (B) the ability of the State or local govern-
2 ment to ensure that the applicants repay the
3 loans in a timely manner;

4 (C) the extent to which the cleanup of the
5 brownfield site or sites would reduce health and
6 environmental risks caused by the release of
7 hazardous substances, pollutants, or contami-
8 nants at, or from, the brownfield site or sites;

9 (D) the demonstrable potential of the
10 brownfield site or sites for stimulating economic
11 development or creation of recreational areas on
12 completion of the cleanup;

13 (E) the demonstrated ability of the grant
14 recipient to administer such a loan program;

15 (F) the demonstrated experience of the
16 local government regarding brownfield sites and
17 the reuse of contaminated land, including
18 whether the government has received any grant
19 under the Comprehensive Environmental Re-
20 sponse, Compensation, and Liability Act of
21 1980 (42 U.S.C. 9601 et seq.) to assess
22 brownfield sites, except that applicants who
23 have not previously received such a grant may
24 be considered for awards under this section;

1 (G) the efficiency of having the loan ad-
2 ministered by the level of government rep-
3 resented by the applicant entity;

4 (H) the experience of administering any
5 loan programs by the entity, including the loan
6 repayment rates;

7 (I) the demonstrations made regarding the
8 ability of the local government to ensure a fair
9 distribution of grant funds among brownfield
10 sites within the jurisdiction of the local govern-
11 ment; and

12 (J) such other factors as the Administrator
13 considers relevant to carry out this section.

14 (3) GRANT AMOUNT.—The amount of a grant
15 made to an applicant under this section shall not ex-
16 ceed \$500,000, except that the Administrator may
17 increase the amount in special circumstances as de-
18 termined by the Administrator.

19 (4) REVOLVING LOAN FUND APPROVAL.—Each
20 application for a grant to capitalize a revolving loan
21 fund under this section shall, as a condition of ap-
22 proval by the Administrator, include a written state-
23 ment by the local government that cleanups to be
24 funded under the loan program of the local govern-
25 ment shall be conducted under the auspices of, and

1 in compliance with, the State voluntary response
2 program or State Superfund program or Federal au-
3 thority.

4 (c) GRANT AGREEMENTS.—Each grant under this
5 section for a revolving loan fund shall be made pursuant
6 to a grant agreement. At a minimum, the grant agreement
7 shall include provisions that ensure the following:

8 (1) COMPLIANCE WITH LAW.—The local govern-
9 ment will include in all loan agreements a require-
10 ment that the loan recipient shall comply with all
11 laws applicable to the cleanup and shall ensure that
12 the cleanup is protective of human health and the
13 environment.

14 (2) REPAYMENT.—The State or local govern-
15 ment will require repayment of the loan consistent
16 with this title.

17 (3) USE OF FUNDS.—The State or local govern-
18 ment will use the funds solely for purposes of estab-
19 lishing and capitalizing a loan program in accord-
20 ance with this title and of cleaning up the environ-
21 mental contamination at the brownfield site or sites.

22 (4) REPAYMENT OF FUNDS.—The State or local
23 government will require in each loan agreement, and
24 take necessary steps to ensure, that the loan recipi-
25 ent will use the loan funds solely for the purposes

1 stated in paragraph (3), and will require the return
2 of any excess funds immediately on a determination
3 by the appropriate local official that the cleanup has
4 been completed.

5 (5) NONTRANSFERABILITY.—The funds will not
6 be transferable, unless the Administrator agrees to
7 the transfer in writing.

8 (6) LIENS.—

9 (A) DEFINITIONS.—In this paragraph, the
10 terms “security interest” and “purchaser” have
11 the meanings given the terms in section
12 6323(h) of the Internal Revenue Code of 1986.

13 (B) LIENS.—A lien in favor of the grant
14 recipient shall arise on the contaminated prop-
15 erty subject to a loan under this section.

16 (C) COVERAGE.—The lien shall cover all
17 real property included in the legal description of
18 the property at the time the loan agreement
19 provided for in this section is signed, and all
20 rights to the property, and shall continue until
21 the terms and conditions of the loan agreement
22 have been fully satisfied.

23 (D) TIMING.—The lien shall—

24 (i) arise at the time a security interest
25 is appropriately recorded in the real prop-

1 erty records of the appropriate office of the
2 State, county, or other governmental sub-
3 division, as designated by State law, in
4 which the real property subject to the lien
5 is located; and

6 (ii) be subject to the rights of any
7 purchaser, holder of a security interest, or
8 judgment lien creditor whose interest is or
9 has been perfected under applicable State
10 law before the notice has been filed in the
11 appropriate office of the State, county, or
12 other governmental subdivision, as des-
13 ignated by State law, in which the real
14 property subject to the lien is located.

15 (7) NOTICE TO STATE.—When a local govern-
16 ment is a grant recipient, the local government will
17 notify the State in which the local government is lo-
18 cated of the receipt of the grant and of the identity
19 of recipients of loans made under the revolving loan
20 fund.

21 (d) AUDITS.—

22 (1) IN GENERAL.—The Inspector General of
23 the Environmental Protection Agency shall audit a
24 portion of the grants awarded under this section to

1 ensure that all funds are used for the purposes set
2 forth in this section.

3 (2) FUTURE GRANTS.—The result of the audit
4 shall be taken into account in awarding any future
5 grants to the local government.

6 (e) AUTHORITY TO AWARD GRANTS TO STATES.—
7 The Administrator may award a grant to a State under
8 the program established under this section at the request
9 of a local government in the State if the Administrator
10 determines that a grant to the State is necessary in order
11 to facilitate the receipt of funds by one or more local gov-
12 ernments that otherwise do not have the capabilities, such
13 as personnel and other resources, to manage grants under
14 the program.

15 **SEC. 103. ENVIRONMENTAL CLEANUP GRANTS.**

16 (a) EXPENDITURES FROM THE SUPERFUND.—
17 Amounts in the Hazardous Substance Superfund estab-
18 lished by section 9507 of the Internal Revenue Code of
19 1986 shall be made available consistent with, and for the
20 purposes of carrying out, the grant programs established
21 under sections 101 and 102.

22 (b) AUTHORITY TO AWARD GRANTS.—There is au-
23 thorized to be appropriated from the Hazardous Sub-
24 stance Superfund for grants to local governments under

1 sections 101 and 102, \$45,000,000 for each of fiscal years
2 1998 through 2000.

3 **SEC. 104. LIMITATIONS ON USE OF FUNDS.**

4 (a) EXCLUDED FACILITIES.—(1) A grant for site in-
5 ventory and assessment under section 101 or to capitalize
6 a revolving loan fund under section 102 may not be used
7 for any activity involving—

8 (A) a facility or portion of a facility that is the
9 subject of a response action (including a facility or
10 portion of a facility with respect to which a record
11 of decision, other than a no-action record of deci-
12 sion, has been issued) under the Comprehensive En-
13 vironmental Response, Compensation, and Liability
14 Act of 1980 (42 U.S.C. 9601 et seq.), unless a pre-
15 liminary assessment, site investigation, or response
16 action has been completed at such facility or portion
17 of a facility and the President has decided not to
18 take further response action at such facility or por-
19 tion of a facility;

20 (B) a facility included, or proposed for inclu-
21 sion, on the National Priorities List maintained by
22 the President under the Comprehensive Environ-
23 mental Response, Compensation, and Liability Act
24 of 1980 (42 U.S.C. 9601 et seq.);

1 (C) an NPL-caliber facility, as defined in para-
2 graph (2);

3 (D) a facility that is subject to corrective action
4 under section 3004(u) or 3008(h) of the Solid Waste
5 Disposal Act (42 U.S.C. 6924(u) or 6928(h)) to
6 which a corrective action permit or order has been
7 issued or modified to require the implementation of
8 corrective measures;

9 (E) any land disposal unit with respect to which
10 a closure notification under subtitle C of the Solid
11 Waste Disposal Act (42 U.S.C. 6921 et seq.) has
12 been submitted and closure requirements have been
13 specified in a closure plan or permit;

14 (F) a facility at which there has been a release
15 of a polychlorinated biphenyl and that is subject to
16 the Toxic Substances Control Act (15 U.S.C. 2601
17 et seq.);

18 (G) a facility with respect to which an adminis-
19 trative or judicial order or decree requiring cleanup
20 has been issued or entered into by the President
21 under—

22 (i) the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of
24 1980 (42 U.S.C. 9601 et seq.);

1 (ii) the Solid Waste Disposal Act (42
2 U.S.C. 6901 et seq.);

3 (iii) the Federal Water Pollution Control
4 Act (33 U.S.C. 1251 et seq.);

5 (iv) the Toxic Substances Control Act (15
6 U.S.C. 2601 et seq.); or

7 (v) the Safe Drinking Water Act (42
8 U.S.C. 300f et seq.);

9 (H) the portion of a facility at which assistance
10 for response activities may be obtained under sub-
11 title I of the Solid Waste Disposal Act (42 U.S.C.
12 6991 et seq.) from the Leaking Underground Stor-
13 age Tank Trust Fund established by section 9508 of
14 the Internal Revenue Code of 1986; and

15 (I) a facility owned or operated by a depart-
16 ment, agency, or instrumentality of the United
17 States, except for land held in trust by the United
18 States for an Indian tribe.

19 (2) For purposes of paragraph (1), the term “NPL-
20 caliber facility” means a facility for which the President,
21 in consultation with the State concerned, has prepared or
22 is preparing a hazardous ranking system scoring package
23 or that satisfies such other definition as the Administrator
24 may promulgate by regulation. The term does not include
25 a facility for which the President—

1 (A) has obtained a score under the hazardous
2 ranking system; and

3 (B) based on that score, has made a determina-
4 tion not to list on the National Priorities List.

5 (3) Notwithstanding paragraph (1), the President
6 may, on a facility-by-facility basis, allow a grant under
7 section 101 or section 102 to be used for an activity in-
8 volving any facility listed in subparagraph (D), (E), (F),
9 (G)(ii), (G)(iii), (G)(iv), (G)(v), (H), or (I) of paragraph
10 (1). In the case of a facility listed in subparagraph (I),
11 the President may use the authority in the preceding sen-
12 tence only if the facility is not a facility described in sub-
13 paragraph (A), (B), (C), or (G)(i).

14 (b) FINES AND COST-SHARING.—A grant made
15 under this title may not be used to pay any fine or penalty
16 owed to a State or the Federal Government, or to meet
17 any Federal cost-sharing requirement.

18 (c) OTHER LIMITATIONS.—

19 (1) IN GENERAL.—Funds made available to a
20 local government under the grant programs estab-
21 lished under section 101 shall be used only to inven-
22 tory and assess brownfield sites as authorized by
23 this title. Funds made available to a local govern-
24 ment under the grant programs established under

1 section 102 shall be used only for capitalizing a re-
2 volving loan fund as authorized by this title.

3 (2) **RESPONSIBILITY FOR CLEANUP ACTION.**—

4 Funds made available under this title may not be
5 used to relieve a local government of the commit-
6 ment or responsibilities of the local government
7 under State law to assist or carry out cleanup ac-
8 tions at brownfield sites.

9 **SEC. 105. EFFECT ON OTHER LAWS.**

10 Nothing in this title changes, modifies, or otherwise
11 affects the liability of any person or the obligations im-
12 posed or authorities provided under any other law or regu-
13 lation, including—

14 (1) the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of 1980 (42
16 U.S.C. 9601 et seq.);

17 (2) the Solid Waste Disposal Act (42 U.S.C.
18 6901 et seq.);

19 (3) the Federal Water Pollution Control Act
20 (33 U.S.C. 1251 et seq.);

21 (4) the Toxic Substances Control Act (15
22 U.S.C. 2601 et seq.); and

23 (5) the Safe Drinking Water Act (42 U.S.C.
24 300f et seq.).

1 **SEC. 106. REGULATIONS.**

2 (a) IN GENERAL.—The Administrator may issue
3 such regulations as are necessary to carry out this title.

4 (b) PROCEDURES AND STANDARDS.—The regulations
5 shall include such procedures and standards as the Admin-
6 istrator considers necessary, including procedures and
7 standards for evaluating an application for a grant or loan
8 submitted under this title.

9 **SEC. 107. AUTHORIZATIONS OF APPROPRIATIONS.**

10 (a) SITE ASSESSMENT PROGRAM.—There is author-
11 ized to be appropriated to carry out section 101
12 \$15,000,000 for each of fiscal years 1998 through 2000.

13 (b) ECONOMIC REDEVELOPMENT ASSISTANCE PRO-
14 GRAM.—There is authorized to be appropriated to carry
15 out section 102 \$30,000,000 for each of fiscal years 1998
16 through 2000.

17 (c) AVAILABILITY OF FUNDS.—The amounts appro-
18 priated under this section shall remain available until ex-
19 pended.

20 **TITLE II—FINANCIAL SUPPORT**
21 **FOR BROWNFIELD SITE PRE-**
22 **VENTION AND REDEVELOP-**
23 **MENT**

24 **SEC. 201. ENVIRONMENTAL REMEDIATION TAX CREDIT.**

25 (a) GENERAL RULE.—Part IV of subchapter A of
26 chapter 1 of the Internal Revenue Code of 1986 (relating

1 to credits allowable) is amended by adding at the end
2 thereof the following new subpart:

3 **“Subpart H—Environmental Remediation Credit**

“Sec. 54. Amount of environmental remediation credit.

“Sec. 54A. Definitions and special rules.

4 **“SEC. 54. AMOUNT OF ENVIRONMENTAL REMEDIATION**
5 **CREDIT.**

6 “(a) GENERAL RULE.—For purposes of section 38,
7 the environmental remediation credit determined under
8 this section is 50 percent of the costs—

9 “(1) which are paid or incurred by the taxpayer
10 for environmental remediation with respect to any
11 qualified contaminated site which is owned by the
12 taxpayer, and

13 “(2) which are incurred by the taxpayer pursu-
14 ant to an environmental remediation plan for such
15 site which was approved by the Administrator of the
16 Environmental Protection Agency or by the head of
17 any State or local government agency designated by
18 the Administrator to carry out the Administrator’s
19 functions under this subpart with respect to such
20 site.

21 “(b) REMEDIATION PLAN MUST BE COMPLETED.—

22 “(1) IN GENERAL.—Except as otherwise pro-
23 vided in paragraph (2)—

1 “(A) no environmental remediation credit
2 shall be determined under this section with re-
3 spect to any qualified contaminated site unless
4 the Administrator of the Environmental Protec-
5 tion Agency (or such Administrator’s designee
6 under subsection (a)(2)) certifies the environ-
7 mental remediation plan for such site has been
8 completed, and

9 “(B) if such Administrator (or designee)
10 certifies that such plan has been completed,
11 such credit shall be taken into account under
12 subsection (a) ratably over the 5 taxable year
13 period beginning with the taxable year in which
14 such plan was completed.

15 “(2) SPECIAL RULE WHERE EXTRAORDINARY
16 COST INCREASES.—If—

17 “(A) the taxpayer determines that due to
18 unforeseen circumstances the cost of completing
19 the remediation plan for any qualified contami-
20 nated site exceeds 200 percent of the estimated
21 costs of completing such plan, and

22 “(B) the State or local official administer-
23 ing the remediation credit program agrees with
24 such determination,

1 the taxpayer may cease the implementation of such
2 plan and shall be entitled to an environmental reme-
3 diation credit with respect to costs incurred before
4 such cessation. Such credit shall be taken into ac-
5 count under subsection (a) ratably over the 5-tax-
6 able-year period beginning with the taxable year in
7 which such cessation occurs.

8 “(c) CERTAIN PARTIES NOT ELIGIBLE.—

9 “(1) IN GENERAL.—A taxpayer shall not be eli-
10 gible for any credit determined under this section
11 with respect to any qualified contaminated site if—

12 “(A) at any time on or before the date of
13 the enactment of this subpart, such taxpayer
14 was the owner or operator of any business on
15 such site,

16 “(B) at any time before, on, or after such
17 date of enactment such taxpayer—

18 “(i) had (by contract, agreement, or
19 otherwise) arranged for the disposal or
20 treatment of any hazardous materials at
21 such site or arranged with a transporter
22 for transport for disposal or treatment of
23 any hazardous materials at such site, or

24 “(ii) had accepted any hazardous ma-
25 terials for transport to such site, or

1 “(C) the taxpayer is related to any tax-
2 payer referred to in subparagraph (A) or (B).

3 “(2) EXCEPTIONS.—

4 “(A) ACQUISITION OF BUSINESS OR SITE
5 BY FORECLOSURE, ETC.—Paragraph (1) shall
6 not apply to a taxpayer who became described
7 therein by reason of the acquisition of the busi-
8 ness or site through foreclosure (or the equiva-
9 lent) of a security interest held by the taxpayer
10 or a related party if the taxpayer undertakes to
11 sell or otherwise dispose of such business or site
12 in a reasonably expeditious manner on commer-
13 cially reasonable terms.

14 “(B) USE OF SITE REMEDIATED BY TAX-
15 PAYER.—Subparagraph (B) of paragraph (1)
16 shall not apply to a taxpayer with respect to
17 any site if—

18 “(i) the only actions described in such
19 subparagraph of the taxpayer (or a related
20 person) with respect to such site occur
21 after such taxpayer (or person) carry out
22 an environmental remediation plan for
23 such site (and the completion of such plan
24 is certified under subsection (b)(1)), and

1 “(ii) such actions are part of bona
2 fide manufacturing process (or other in-
3 dustrial activity at such site) of such tax-
4 payer (or person) which complies with all
5 Federal environmental laws and regula-
6 tions.

7 “(d) QUALIFIED CONTAMINATED SITE.—For pur-
8 poses of this subpart, the term ‘qualified contaminated
9 site’ means any contaminated site if—

10 “(1) the condition of the contaminated site is
11 such that without participation in the environmental
12 remediation credit program redevelopment is un-
13 likely,

14 “(2) there is a strong likelihood of redevelop-
15 ment of the site for industrial or commercial use
16 that will result in creation of jobs and expansion of
17 the tax base, and

18 “(3) environmental remediation and redevelop-
19 ment are likely to be completed within a reasonable
20 period of time.

21 **“SEC. 54A. DEFINITIONS AND SPECIAL RULES.**

22 “(a) CONTAMINATED SITE.—For purposes of this
23 subpart—

1 “(1) IN GENERAL.—The term ‘contaminated
2 site’ means any site if at least 1 of the following en-
3 vironmental conditions are present on such site:

4 “(A) A release or threatened release of any
5 hazardous, toxic, or dangerous substance.

6 “(B) Any storage tanks which contain any
7 hazardous, toxic, or dangerous substance.

8 “(C) Any illegal disposal of solid waste.

9 “(2) HAZARDOUS, TOXIC, OR DANGEROUS SUB-
10 STANCE.—Any substance, waste, or material shall be
11 treated as a hazardous, toxic, or dangerous sub-
12 stance if it is so treated under—

13 “(A) the Comprehensive Environmental
14 Response, Compensation, and Liability Act (42
15 U.S.C. 9601 et seq.) as in effect on the date of
16 the enactment of this section, or

17 “(B) the Solid Waste Disposal Act (42
18 U.S.C. 6901 et seq.) as so in effect.

19 The following materials shall in any event be treated
20 as such a substance: petroleum or crude oil or any
21 derivative thereof, friable asbestos or any asbestos
22 containing material, polychlorinated biphenyls, and
23 lead paint.

1 “(b) ENVIRONMENTAL REMEDIATION.—For pur-
2 poses of this subpart, the term ‘environmental remedi-
3 ation’ means—

4 “(1) removal or remediation activity in accord-
5 ance with the plan approved under section 54(a)(2),

6 “(2) restoration of natural, historic or cultural
7 resources at the site, or the mitigation of unavoid-
8 able losses of such resources incurred in connection
9 with the remediation or response activity,

10 “(3) health assessments or health effects stud-
11 ies related to the site,

12 “(4) remediation of off-site contamination
13 caused by activity on the site (other than remedi-
14 ation activities of a type not permitted for the site),
15 and

16 “(5) any other costs specified in the plan ap-
17 proved under section 54(a)(2), including demolition
18 of existing contaminated structures, site security,
19 permit fees necessary for remediation, and environ-
20 mental audits.

21 “(c) RELATED PERSON.—For purposes of this sub-
22 part, persons shall be treated as related to each other if
23 such persons are treated as a single employer under the
24 regulations prescribed under section 52(b) or such persons

1 bear a relationship to each other specified in section
2 267(b) or 707(b).

3 “(d) COORDINATION WITH EXPENSING OF ENVIRON-
4 MENTAL REMEDIATION COSTS.—The costs taken into ac-
5 count under section 54(a) do not include any costs for
6 which an election is in effect under section 198.”.

7 (b) CREDIT MADE PART OF GENERAL BUSINESS
8 CREDIT.—Subsection (b) of section 38 of such Code is
9 amended by striking “plus” at the end of paragraph (10),
10 by striking the period at the end of paragraph (11) and
11 inserting “, plus”, and by adding at the end thereof the
12 following new paragraph:

13 “(12) the environmental remediation credit
14 under section 54(a).”.

15 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
16 section 39 of such Code is amended by adding at the end
17 thereof the following new paragraph:

18 “(7) NO CARRYBACK OF ENVIRONMENTAL RE-
19 MEDIATION CREDIT BEFORE EFFECTIVE DATE.—No
20 portion of the unused business credit for any taxable
21 year which is attributable to the credit under section
22 54 may be carried back to a taxable year beginning
23 on or before the date of the enactment of section
24 54.”.

1 (d) DEDUCTION FOR UNUSED CREDIT.—Subsection
2 (c) of section 196 of such Code is amended by striking
3 “and” at the end of paragraph (6), by striking the period
4 at the end of paragraph (7) and inserting “, and”, and
5 by adding at the end thereof the following new paragraph:

6 “(8) the environmental remediation credit de-
7 termined under section 54.”.

8 (e) CLERICAL AMENDMENT.—The table of subparts
9 for part IV of subchapter A of chapter 1 of such Code
10 is amended by adding at the end thereof the following new
11 item:

“Subpart H. Environmental remediation credit.”.

12 (f) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

15 **SEC. 202. BROWNFIELDS IRA.**

16 (a) IN GENERAL.—Subpart C of part II of sub-
17 chapter E of chapter 1 of the Internal Revenue Code of
18 1986 is amended by inserting after section 468B the fol-
19 lowing new section:

20 **“SEC. 468C. SPECIAL RULES FOR HAZARDOUS WASTE RE-
21 MEDIATION RESERVES.**

22 “(a) IN GENERAL.—There shall be allowed as a de-
23 duction for any taxable year the amount of payments
24 made by the taxpayer to a Hazardous Waste Remediation

1 Reserve (hereinafter referred to as the ‘Reserve’) during
2 such taxable year.

3 “(b) LIMITATION ON AMOUNTS PAID INTO RE-
4 SERVE.—The amount which a taxpayer may pay into the
5 Reserve for any taxable year shall not exceed the lesser
6 of—

7 “(1) \$5,000,000, or

8 “(2) the excess (if any) of \$5,000,000 over the
9 amount paid into the Reserve for all prior taxable
10 years.

11 “(c) INCOME AND DEDUCTIONS OF THE TAX-
12 PAYER.—

13 “(1) INCLUSION OF AMOUNTS DISTRIBUTED.—

14 There shall be includible in the gross income of the
15 taxpayer for any taxable year—

16 “(A) any amount distributed from the Re-
17 serve during such taxable year, and

18 “(B) any deemed distribution under sub-
19 section (e).

20 “(2) DEDUCTION WHEN ECONOMIC PERFORM-

21 ANCE OCCURS.—In addition to any deduction under
22 subsection (a), there shall be allowable as a deduc-
23 tion for any taxable year the amount of the qualified
24 hazardous waste costs with respect to which eco-

1 nomic performance (within the meaning of section
2 461(h)(2)) occurs during such taxable year.

3 “(d) HAZARDOUS WASTE REMEDIATION RESERVE.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the term ‘Hazardous Waste Remediation Re-
6 serve’ means a reserve established by the taxpayer
7 for purposes of this section.

8 “(2) RESERVE EXEMPT FROM TAXATION.—Any
9 Hazardous Waste Remediation Reserve is exempt
10 from taxation under this subtitle unless such Re-
11 serve has ceased to be a Hazardous Waste Remedi-
12 ation Reserve by reason of subsection (e). Notwith-
13 standing the preceding sentence, any such Reserve
14 shall be subject to the taxes imposed by section 511
15 (relating to imposition of tax on unrelated business
16 income of charitable, etc. organizations).

17 “(3) CONTRIBUTIONS TO RESERVE.—The Re-
18 serve shall not accept any payments (or other
19 amounts) other than payments with respect to which
20 a deduction is allowable under subsection (a).

21 “(4) USE OF RESERVE.—The Reserve shall be
22 used exclusively to pay the qualified hazardous waste
23 costs of the taxpayer.

24 “(5) PROHIBITIONS AGAINST SELF-DEALING.—
25 Under regulations prescribed by the Secretary, for

1 purposes of section 4951 (and so much of this title
2 as relates to such section), the Reserve shall be
3 treated in the same manner as a trust described in
4 section 501(c)(21).

5 “(e) DEEMED DISTRIBUTIONS.—

6 “(1) DISQUALIFICATION OF RESERVE FOR
7 SELF-DEALING.—In any case in which a Reserve vio-
8 lates any provision of this section or section 4951,
9 the Secretary may disqualify such Reserve from the
10 application of this section. In any case to which this
11 paragraph applies, the Reserve shall be treated as
12 having distributed all of its funds on the date such
13 determination takes effect.

14 “(2) FAILURE TO SPEND FUNDS.—A Reserve
15 shall be treated as having distributed all of its
16 funds—

17 “(A) on the date which is 10 years after
18 the date such Reserve was established unless,
19 as of such date—

20 “(i) it has been determined that some
21 property of the taxpayer is contaminated
22 with hazardous waste, and

23 “(ii) a remediation plan has been pre-
24 pared for such site, and

1 “(B) except as otherwise provided by the
2 Secretary, on the date which is 10 years after
3 the date such Reserve was established unless,
4 as of such date, it is reasonably anticipated that
5 the remaining funds in the Reserve will be dis-
6 tributed before the date which is 15 years after
7 the date such Reserve was established.

8 “(f) PENALTY FOR DISTRIBUTIONS NOT USED FOR
9 QUALIFIED HAZARDOUS WASTE COSTS.—The tax im-
10 posed by this chapter for any taxable year in which any
11 amount distributed from a Reserve is not used exclusively
12 to pay qualified hazardous waste costs shall be increased
13 by 10 percent of such amount.

14 “(g) QUALIFIED HAZARDOUS WASTE COSTS.—For
15 purposes of this section, the term ‘qualified hazardous
16 waste costs’ means—

17 “(1) the costs paid or incurred by the taxpayer
18 in connection with the assessment of—

19 “(A) the extent of the environmental con-
20 tamination of a site which is owned by the tax-
21 payer, and

22 “(B) the expected cost of environmental
23 remediation required for such site, and

24 “(2) the costs paid or incurred by the taxpayer
25 to remediate such contamination.

1 “(h) CONTROLLED GROUPS.—All persons treated as
 2 a single employer under subsection (a) or (b) of section
 3 52 shall be treated as one person for purposes of sub-
 4 section (b), and the dollar amount contained in such sub-
 5 section shall be allocated among such persons in such
 6 manner as the Secretary shall prescribe.

7 “(i) TIME WHEN PAYMENTS DEEMED MADE.—For
 8 purposes of this section, a taxpayer shall be deemed to
 9 have made a payment to the Reserve on the last day of
 10 a taxable year if such payment is made on account of such
 11 taxable year and is made within 2½ months after the close
 12 of such taxable year.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 for subpart C of part II of subchapter E of chapter 1 of
 15 such Code is amended by inserting after the item relating
 16 to section 468B the following new item:

“Sec. 468C. Special rules for hazardous waste remediation re-
 serves.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to taxable years beginning after
 19 the date of the enactment of this Act.

20 **SEC. 203. ISSUANCE OF BOND TO FINANCE TAX-EXEMPT EN-**
 21 **VIRONMENTAL REMEDIATION OF CONTAMI-**
 22 **NATED SITES.**

23 (a) IN GENERAL.—Subsection (e) of section 141 of
 24 the Internal Revenue Code of 1986 (defining qualified

1 bond) is amended by striking “or” at the end of subpara-
2 graph (F), by redesignating subparagraph (G) as subpara-
3 graph (H), and by inserting after subparagraph (F) the
4 following new subparagraph:

5 “(G) a qualified contaminated site remedi-
6 ation bond, or”.

7 (b) QUALIFIED CONTAMINATED SITE REMEDIATION
8 BOND.—Section 144 of such Code is amended by adding
9 at the end thereof the following new subsection:

10 “(d) QUALIFIED CONTAMINATED SITE REMEDIATION
11 BOND.—For purposes of this part—

12 “(1) IN GENERAL.—The term ‘qualified con-
13 taminated site remediation bond’ means any bond
14 issued as part of an issue 95 percent or more of the
15 proceeds of which are to finance—

16 “(A) the acquisition of a qualified contami-
17 nated site, or

18 “(B) the costs of environmental remedi-
19 ation with respect to such a site which is owned
20 by the person incurring such costs.

21 “(2) LIMITATIONS.—

22 “(A) IN GENERAL.—Such term shall not
23 include any bond issued to provide financing
24 with respect to a qualified contaminated site
25 if—

1 “(i) any amount of such financing is
2 provided directly or indirectly to any ineli-
3 gible person,

4 “(ii) less than 60 percent of the
5 amount of the financing so provided with
6 respect to such site is for costs described
7 in paragraph (1)(B), or

8 “(iii) the amount of the financing so
9 provided to acquire such site exceeds the
10 excess of—

11 “(I) the fair market value of the
12 site after the completion of the envi-
13 ronmental remediation, over

14 “(II) the amount of the financing
15 so provided with respect to such site
16 for costs described in paragraph
17 (1)(B).

18 “(B) INELIGIBLE PERSON.—For purposes
19 of subparagraph (A), a person is an ineligible
20 person with respect to any site if—

21 “(i) at any time on or before the date
22 of the enactment of this subsection such
23 person was the owner or operator of any
24 business on such site,

1 “(ii) at any time before, on, or after
2 such date of enactment such person—

3 “(I) had (by contract, agreement,
4 or otherwise) arranged for the dis-
5 posal or treatment of any hazardous
6 materials at such site or arranged
7 with a transporter for transport for
8 disposal or treatment of any hazard-
9 ous materials at such site, or

10 “(II) had accepted any hazardous
11 materials for transport to such site, or

12 “(iii) the person is related to any per-
13 son referred to in clause (i) or (ii).

14 “(C) RELATED PERSON.—For purposes of
15 this paragraph, persons shall be treated as re-
16 lated to each other if such persons are treated
17 as a single employer under the regulations pre-
18 scribed under section 52(b) or such persons
19 bear a relationship to each other specified in
20 section 267(b) or 707(b).

21 “(3) RESTRICTION ON LAND ACQUISITION NOT
22 TO APPLY.—Section 147(c) shall not apply to any
23 qualified contaminated site remediation bond.

24 “(4) QUALIFIED CONTAMINATED SITE.—

1 “(A) IN GENERAL.—For purposes of this
2 subsection, the term ‘qualified contaminated
3 site’ means any site if the appropriate agency
4 certifies that at least 1 of the following environ-
5 mental conditions is present on such site:

6 “(i) A release or threatened release of
7 any hazardous, toxic, or dangerous sub-
8 stance.

9 “(ii) Any storage tanks which contain
10 any hazardous, toxic, or dangerous sub-
11 stance.

12 “(iii) Any illegal disposal of solid
13 waste.

14 Such term shall not include any site listed on
15 the National Priorities List under the Com-
16 prehensive Environmental Response, Compensa-
17 tion, and Liability Act of 1980.

18 “(B) APPROPRIATE AGENCY.—For pur-
19 poses of subparagraph (A), the appropriate
20 agency is—

21 “(i) the agency of the State in which
22 the site is located which is designated by
23 the Administrator of the Environmental
24 Protection Agency for purposes of this
25 paragraph, or

1 “(ii) if the agency described in clause
2 (i) designates an agency of the local gov-
3 ernment in which the site is located for
4 purposes of this paragraph, such local gov-
5 ernment agency.

6 “(5) HAZARDOUS, TOXIC, OR DANGEROUS SUB-
7 STANCE.—For purposes of this subsection, any sub-
8 stance, waste, or material shall be treated as a haz-
9 ardous, toxic, or dangerous substance if it is so
10 treated under—

11 “(A) the Comprehensive Environmental
12 Response, Compensation, and Liability Act of
13 1980 (42 U.S.C. 9601 et seq.),

14 “(B) the Solid Waste Disposal Act (42
15 U.S.C. 6901 et seq.), or

16 “(C) any State or local environmental law
17 or ordinance.

18 The following materials shall in any event be treated
19 as such a substance: petroleum or crude oil or any
20 derivative thereof, friable asbestos or any asbestos
21 containing material, polychlorinated biphenyls, or
22 urea formaldehyde foam insulation.

23 “(6) ENVIRONMENTAL REMEDIATION.—For
24 purposes of this subsection, the term ‘environmental
25 remediation’ means—

1 “(A) removal or remediation activity, in-
2 cluding soil and ground water remediation,

3 “(B) restoration of natural, historic, or
4 cultural resources at the site or the mitigation
5 of unavoidable losses of such resources incurred
6 in connection with the remediation or response
7 activity,

8 “(C) health assessments or health effects
9 studies,

10 “(D) environmental investigations,

11 “(E) remediation of off-site contamination
12 caused by activity on the site, and

13 “(F) any other costs reasonably required
14 by reason of the environmental conditions of the
15 site including demolition of existing contami-
16 nated structures, site security, and permit fees
17 necessary for remediation.”.

18 (c) CLERICAL AMENDMENTS.—The section heading
19 for section 144 of such Code is amended by inserting be-
20 fore the period “; qualified contaminated site remediation
21 bond”.

1 **SEC. 204. SMALL BUSINESS ADMINISTRATION SET-ASIDE**
2 **FOR BROWNFIELD PREVENTION AND REDE-**
3 **VELOPMENT PROJECTS UNDER SECTION 504**
4 **DEVELOPMENT COMPANY PROGRAM.**

5 Section 504 of the Small Business Investment Act
6 of 1958 (15 U.S.C. 697a) is amended by adding at the
7 end the following new subsection:

8 “(c) SET-ASIDE FOR BROWNFIELD PREVENTION
9 AND REDEVELOPMENT PROJECTS.—

10 “(1) PURPOSE.—The purpose of this subsection
11 is to make capital available to small, polluting indus-
12 tries, or to the prospective purchasers of such indus-
13 tries, that have limited or no access to capital from
14 conventional sources for the purposes of assessing
15 and cleaning up their sites and facilities or acquiring
16 new, clean technologies and production equipment.

17 “(2) SET-ASIDE.—The Administration shall set
18 aside the lesser of \$50,000,000 or 10 percent of the
19 amount available for the development company pro-
20 gram in a fiscal year for local development compa-
21 nies to use to finance projects that—

22 “(A) assist existing businesses to carry out
23 site assessment and cleanup activities; or

24 “(B) assist prospective new business own-
25 ers or operators to carry out site assessment
26 and cleanup activities in order to facilitate the

1 transition to new ownership or encourage indus-
2 trial succession.

3 “(3) DEFINITION.—In this subsection, the term
4 ‘site assessment’, with respect to a brownfield site,
5 means any investigation of the site determined ap-
6 propriate by the President and undertaken pursuant
7 to section 104(b) of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act
9 of 1980 (42 U.S.C. 9604(b)).”.

10 **SEC. 205. PROMOTION OF SMALL BUSINESS INVESTMENT**
11 **COMPANIES FOR BROWNFIELD ACTIVITIES.**

12 Title III of the Small Business Investment Act of
13 1958 (15 U.S.C. 681 et seq.) is amended by adding at
14 the end the following new section:

15 **“SEC. 321. SMALL BUSINESS INVESTMENT COMPANIES FOR**
16 **BROWNFIELD ACTIVITIES.**

17 “(a) PROMOTION OF CERTAIN SMALL BUSINESS IN-
18 VESTMENT COMPANIES.—The Administration shall pro-
19 mote the formation of one or more small business invest-
20 ment companies devoted to—

21 “(1) brownfield site cleanup activities, including
22 those that use innovative or experimental cleanup
23 technologies; or

24 “(2) projects that help existing companies clean
25 up their facilities and adopt new, clean technologies.

1 “(b) AUTHORITY TO WAIVE CERTAIN FEE.—For
2 any small business investment company described in sub-
3 section (a), the Administration may waive the filing fee
4 usually imposed by the Administration.

5 “(c) SET-ASIDE.—The Small Business Administra-
6 tion shall set aside the lesser of \$2,000,000 or 10 percent
7 of the amount available for the small business investment
8 company program under this title to use to provide lever-
9 age to any small business investment company described
10 in subsection (a).

11 “(d) DEFINITION.—In this section, the term
12 ‘brownfield site’ means an abandoned, idled, or underused
13 commercial or industrial facility, the expansion or redev-
14 opment of which is complicated by real or perceived envi-
15 ronmental contamination.”.

○