

116TH CONGRESS
1ST SESSION

S. 786

To amend the Internal Revenue Code of 1986 to establish a new tax credit and grant program to stimulate investment and healthy nutrition options in food deserts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2019

Mr. WARNER (for himself, Mr. MORAN, Mrs. CAPITO, and Mr. CASEY) 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 establish a new tax credit and grant program to stimulate investment and healthy nutrition options in food deserts, 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 “Healthy Food Access
5 for All Americans Act”.

6 **SEC. 2. TAX CREDIT AND GRANT PROGRAM FOR SPECIAL**
7 **ACCESS FOOD PROVIDERS.**

8 (a) IN GENERAL.—

1 (1) ALLOWANCE OF CREDIT.—Subpart D of
 2 part IV of subchapter A of chapter 1 of the Internal
 3 Revenue Code of 1986 is amended by adding at the
 4 end the following new section:

5 **“SEC. 45T. SPECIAL ACCESS FOOD PROVIDER CREDIT AND**
 6 **GRANT PROGRAM.**

7 “(a) ESTABLISHMENT OF CREDIT FOR GROCERY
 8 STORES.—

9 “(1) IN GENERAL.—For purposes of section 38,
 10 the special access food provider credit determined
 11 under this section for any taxable year is an amount
 12 equal to the lesser of—

13 “(A) the amount of the allocation received
 14 by the taxpayer under subsection (d)(1)(A), or

15 “(B) the amount equal to—

16 “(i) in the case of a qualified grocery
 17 store which is placed in service during such
 18 taxable year by a taxpayer which has been
 19 certified as a special access food provider,
 20 15 percent of the basis of such grocery
 21 store, including any property used in the
 22 operation of such grocery store—

23 “(I) which is acquired by the tax-
 24 payer if the original use of such prop-

1 erty commences with the taxpayer,
2 and

3 “(II) with respect to which de-
4 preciation (or amortization in lieu of
5 depreciation) is allowable, or

6 “(ii) in the case of a qualified renova-
7 tion area which is placed in service during
8 such taxable year, 10 percent of the ren-
9 ovation expenditures incurred by a tax-
10 payer which has been certified as a special
11 access food provider.

12 “(2) RENOVATION EXPENDITURES.—For pur-
13 poses of paragraph (1)(B)(ii), the term ‘renovation
14 expenditures’ means amounts chargeable to capital
15 account and incurred for property (or additions or
16 improvements to property) of a character subject to
17 the allowance for depreciation in connection with the
18 renovation or rehabilitation of a grocery store.

19 “(b) GRANT PROGRAM FOR FOOD BANKS AND TEM-
20 PORARY ACCESS MERCHANTS.—

21 “(1) IN GENERAL.—The Secretary, in coordina-
22 tion with the Secretary of Agriculture, shall, subject
23 to the requirements of this section, provide a grant
24 to any entity which has been certified as a special

1 access food provider in an amount equal to the less-
 2 er of—

3 “(A) the amount of the allocation received
 4 by the entity under subsection (d)(1)(B), or

5 “(B) the amount equal to—

6 “(i) in the case of a permanent food
 7 bank which has been placed in service dur-
 8 ing the taxable year by such provider, 15
 9 percent of any qualified construction ex-
 10 penses incurred by such provider; and

11 “(ii) in the case of any provider which
 12 qualifies as a temporary access merchant,
 13 10 percent of any annual operational costs
 14 incurred by such provider.

15 “(2) TIME FOR PAYMENT OF GRANT.—The Sec-
 16 retary shall make payment of any grant under para-
 17 graph (1) during the 60-day period beginning on the
 18 later of—

19 “(A) the date of the application for certifi-
 20 cation as a special access food provider, or

21 “(B) the date—

22 “(i) in the case of a permanent food
 23 bank, on which the food bank for which
 24 the grant is being made is placed in serv-
 25 ice, or

1 “(ii) in the case of a temporary access
2 merchant, the end of the taxable year in
3 which the operational costs were incurred.

4 “(3) GRANT NOT CONSIDERED INCOME FOR
5 PURPOSES OF TAXATION.—A grant under this sub-
6 section shall not be considered as gross income for
7 purposes of this chapter.

8 “(c) CERTIFICATION AS A SPECIAL ACCESS FOOD
9 PROVIDER.—

10 “(1) APPLICATION.—Each applicant for certifi-
11 cation as a special access food provider shall submit,
12 for each grocery store, food bank, mobile market, or
13 farmers market, an application with the Secretary,
14 at such time, in such manner, and containing such
15 information as the Secretary may reasonably re-
16 quire.

17 “(2) CERTIFICATION REQUIREMENTS.—For
18 purposes of certification as a special access food pro-
19 vider, the Secretary, in consultation with the Sec-
20 retary of Agriculture and the applicable regional
21 community development entity, shall determine
22 whether—

23 “(A) in the case of an applicant seeking to
24 construct, renovate, or rehabilitate a grocery
25 store, whether such store—

1 “(i) following completion of such con-
2 struction, renovation, or rehabilitation, will
3 qualify as a grocery store (as defined in
4 subsection (h)(3)),

5 “(ii) is located in a food desert on the
6 date on which construction, renovation, or
7 rehabilitation begins,

8 “(iii) satisfies the eligibility criteria
9 established for projects under the Healthy
10 Food Financing Initiative established
11 under section 243 of the Department of
12 Agriculture Reorganization Act of 1994 (7
13 U.S.C. 6953), and

14 “(iv) satisfies such other criteria as is
15 determined appropriate by the Secretary,
16 in consultation with the Secretary of Agri-
17 culture, or

18 “(B) in the case of an applicant seeking to
19 operate a permanent food bank or as a tem-
20 porary access merchant, whether such appli-
21 cant—

22 “(i) is an entity for which no part of
23 the net earnings of such entity inures to
24 the benefit of any private shareholder or
25 individual,

1 “(ii)(I) in the case of a permanent
 2 food bank, is located in a food desert on
 3 the date on which construction of such
 4 food bank begins, or

5 “(II) in the case of a temporary ac-
 6 cess merchant—

7 “(aa) sells or provides food in
 8 any food desert for an average of—

9 “(AA) in the case of a farm-
 10 ers market, not less than 10
 11 hours (during daylight hours)
 12 each week during the calendar
 13 year, or

14 “(BB) in the case of a tem-
 15 porary access merchant which is
 16 not a farmers market, not less
 17 than 5 days and 50 hours each
 18 week during the calendar year, or

19 “(bb) satisfies such requirements
 20 as are established by the Secretary of
 21 Agriculture to ensure an adequate
 22 level of food distribution within food
 23 deserts,

24 “(iii) satisfies the eligibility criteria
 25 described in subparagraph (A)(iii), and

1 “(iv) satisfies such other criteria as is
 2 determined appropriate by the Secretary.

3 “(3) NO ADDITIONAL USDA GRANTS FOR FARM-
 4 ERS MARKETS.—A farmers market shall not be eligi-
 5 ble for certification as a special access food provider
 6 during any period in which such farmers market re-
 7 ceives funding pursuant to any other grant program
 8 administered by the Department of Agriculture
 9 (with the exception of grants provided pursuant to
 10 the Food Insecurity Nutrition Incentive under sec-
 11 tion 4405 of the Food, Conservation, and Energy
 12 Act of 2008).

13 “(d) ALLOCATION OF SPECIAL ACCESS FOOD PRO-
 14 VIDER CREDITS AND GRANTS.—

15 “(1) IN GENERAL.—In each calendar year, the
 16 Secretary, in coordination with the Secretary of Ag-
 17 riculture, shall provide allocations to entities which
 18 have been certified as special access food providers
 19 under subsection (c) to receive—

20 “(A) in the case of an entity certified pur-
 21 suant to subparagraph (A) of subsection (c)(2),
 22 a special access food provider credit for expend-
 23 itures related to a qualified grocery store or
 24 qualified renovation area, and

1 “(B) in the case of an entity certified pur-
2 suant to subparagraph (B) of such subsection,
3 grants for qualified construction expenses or
4 operational costs incurred by such entity.

5 “(2) DURATION OF GRANTS TO TEMPORARY AC-
6 CESS MERCHANTS.—In the case of a special access
7 food provider which qualifies as a temporary access
8 merchant, the Secretary shall provide the grant to
9 such provider on an annual basis for a period of not
10 greater than 10 years.

11 “(e) RECAPTURE.—

12 “(1) IN GENERAL.—Subject to paragraph (3),
13 the Secretary shall provide for recapturing the ben-
14 efit of any credit allowable or grant provided under
15 this section with respect to any qualified grocery
16 store, qualified renovation area, or permanent food
17 bank which fails to satisfy the requirements under
18 subsection (c)(2) during the 5-year period following
19 the date on which such store, area, or food bank is
20 placed in service.

21 “(2) TEMPORARY ACCESS MERCHANT.—Subject
22 to paragraph (3), the Secretary shall provide for re-
23 capturing the benefit of any grant provided under
24 this section with respect to any temporary access
25 merchant which fails to satisfy the requirements

1 under subsection (c)(2) for any year during the pe-
2 riod described in subsection (d)(2).

3 “(3) APPLICATION.—If, during any taxable
4 year, a special access food provider fails to satisfy
5 the requirements under subsection (c)(2), the tax
6 under this chapter for such taxable year shall be in-
7 creased by an amount equal to the appropriate per-
8 centage of the credit or grant amount as is deter-
9 mined appropriate by the Secretary.

10 “(f) BASIS REDUCTION.—The basis of any qualified
11 grocery store, any grocery store which includes a qualified
12 renovation area, or any food bank, mobile market, or
13 farmers market shall be reduced by the amount of any
14 credit or grant determined under this section with respect
15 to such property.

16 “(g) REGULATIONS.—The Secretary, in coordination
17 with the Secretary of Agriculture, shall prescribe such reg-
18 ulations as may be appropriate to carry out this section,
19 including regulations which—

20 “(1) prevent the abuse of the purposes of this
21 section,

22 “(2) impose appropriate reporting require-
23 ments, and

1 “(3) ensure that non-metropolitan areas receive
 2 a proportional amount of allocations provided under
 3 subsection (d).

4 “(h) DEFINITIONS.—For purposes of this section:

5 “(1) FOOD DESERT.—

6 “(A) IN GENERAL.—The term ‘food desert’
 7 means any population census tract in which—

8 “(i) not less than 500 people, or 33
 9 percent of the population of such tract, re-
 10 side—

11 “(I) in the case of a tract located
 12 within a metropolitan area, more than
 13 1 mile from a grocery store, or

14 “(II) in the case of a tract not lo-
 15 cated within a metropolitan area,
 16 more than 10 miles from a grocery
 17 store,

18 “(ii) the poverty rate for such tract is
 19 at least 20 percent, or

20 “(iii)(I) in the case of a tract not lo-
 21 cated within a metropolitan area, the me-
 22 dian family income for such tract does not
 23 exceed 80 percent of statewide median
 24 family income, or

1 “(II) in the case of a tract located
 2 within a metropolitan area, the median
 3 family income for such tract does not ex-
 4 ceed 80 percent of the greater of statewide
 5 median family income or the metropolitan
 6 area median family income.

7 “(B) AREAS NOT WITHIN CENSUS
 8 TRACTS.—In the case of an area which is not
 9 traced for population census tracts, the equiva-
 10 lent county divisions (as defined by the Bureau
 11 of the Census) shall be used for purposes of de-
 12 terminations of food deserts under this para-
 13 graph.

14 “(C) DETERMINATION OF FOOD
 15 DESERTS.—For purposes of determining wheth-
 16 er a population census tract qualifies as a food
 17 desert for purposes of this section, the Sec-
 18 retary shall make such determinations in co-
 19 ordination with the Secretary of Agriculture in
 20 such manner as is determined appropriate, in-
 21 cluding use of the Food Access Research Atlas
 22 established by the Department of Agriculture.

23 “(2) GROCERIES.—The term ‘groceries’
 24 means—

25 “(A) fresh and frozen produce,

1 “(B) fresh and frozen meat and seafood,
2 “(C) dairy products, and
3 “(D) deli products, including sliced meats,
4 cheeses, and salads.

5 “(3) GROCERY STORE.—The term ‘grocery
6 store’ means a retail store for which forecasted sales
7 of groceries account for not less than 35 percent of
8 its total annual sales.

9 “(4) METROPOLITAN AREA.—The term ‘metro-
10 politan area’ has the same meaning given the term
11 ‘metropolitan statistical area’ under section
12 143(k)(2)(B).

13 “(5) QUALIFIED CONSTRUCTION EXPENSES.—
14 The term ‘qualified construction expenses’ means
15 any costs incurred by the special access food pro-
16 vider before the date on which a permanent food
17 bank is placed in service relating to the planning,
18 design, and construction of such food bank.

19 “(6) QUALIFIED GROCERY STORE.—The term
20 ‘qualified grocery store’ means a grocery store
21 which, on the date on which construction of such
22 store begins, is located in a food desert.

23 “(7) QUALIFIED RENOVATION AREA.—The term
24 ‘qualified renovation area’ means any area of a gro-
25 cery store in which groceries are sold, provided that

1 such grocery store, on the date on which renovation
2 of such area begins, is located in a food desert.

3 “(8) REGIONAL COMMUNITY DEVELOPMENT EN-
4 TITY.—

5 “(A) IN GENERAL.—The term ‘regional
6 community development entity’ means any do-
7 mestic corporation or partnership if—

8 “(i) the primary mission of the entity
9 is serving, or providing investment capital
10 for, low-income communities or low-income
11 persons,

12 “(ii) the entity maintains account-
13 ability to residents of low-income commu-
14 nities through their representation on any
15 governing board of the entity or on any ad-
16 visory board to the entity, and

17 “(iii) the entity is certified by the Sec-
18 retary for purposes of this section as being
19 a regional community development entity.

20 “(B) LOCAL GOVERNMENT.—In the case of
21 a grocery store for which there is no entity de-
22 scribed in subparagraph (A) within a 50-mile
23 radius, the chief executive officer (or the equiv-
24 alent) of the local jurisdiction in which the gro-
25 cery store will be located may serve as the re-

1 gional community development entity for pur-
2 poses of subsection (c)(2).

3 “(9) SECRETARY OF AGRICULTURE.—The term
4 ‘Secretary of Agriculture’ means the Secretary of
5 Agriculture or the Secretary’s delegate.

6 “(10) TEMPORARY ACCESS MERCHANT.—The
7 term ‘temporary access merchant’ means a mobile
8 market, a farmers market, or a temporary or mobile
9 food bank (as such terms are defined by the Sec-
10 retary, in coordination with the Secretary of Agri-
11 culture)—

12 “(A) which is operated by a special access
13 food provider; and

14 “(B) for which the primary purpose is food
15 distribution within food deserts.”.

16 (b) CREDIT PART OF GENERAL BUSINESS CREDIT.—
17 Section 38(b) of the Internal Revenue Code of 1986 is
18 amended by striking “plus” at the end of paragraph (31),
19 by striking the period at the end of paragraph (32) and
20 inserting “, plus”, and by adding at the end the following
21 new paragraph:

22 “(33) the special access food provider credit de-
23 termined under section 45T(a).”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by add-
 2 ing at the end the following new item:

“Sec. 45T. Special access food provider credit and grant program.”.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated such sums as may be
 5 necessary to carry out the purposes of this section.

6 (e) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to taxable years beginning after
 8 the date of the enactment of this Act.

9 **SEC. 3. UPDATES TO FOOD ACCESS RESEARCH ATLAS.**

10 Section 243 of the Department of Agriculture Reor-
 11 ganization Act of 1994 (7 U.S.C. 6953) is amended—

12 (1) by redesignating subsection (d) as sub-
 13 section (e); and

14 (2) by inserting after subsection (c) the fol-
 15 lowing:

16 “(d) FOOD ACCESS RESEARCH ATLAS.—Not less fre-
 17 quently than once each year, the Secretary shall update
 18 the Food Access Research Atlas of the Secretary to ac-
 19 count for food retailers that are placed in service during
 20 that year.”.

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