

105TH CONGRESS
1ST SESSION

S. 901

To provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of habitat; to amend the Internal Revenue Code of 1986 to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement; and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1997

Mr. KEMPTHORNE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of habitat; to amend the Internal Revenue Code of 1986 to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement; 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Endangered Species Habitat Protection Act of 1997”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Enhanced deduction for the denotation of a conservation easement.

Sec. 4. Exclusion from estate for real property subject to endangered species
conservation agreement.

Sec. 5. Income tax incentives to preserve land to protect endangered species.

6 **SEC. 2. FINDINGS.**

7 The Senate finds and declares the following:

8 (1) The majority of American property owners
9 recognize the importance of protecting the environ-
10 ment, including the habitat upon which endangered
11 and threatened species depend.

12 (2) Current Federal tax laws discourage place-
13 ment of privately held lands into endangered and
14 threatened species conservation agreements.

15 (3) The Federal Government should assist land-
16 owners in the goal of conserving endangered and
17 threatened species and their habitat.

18 (4) If the environment is to be protected and
19 preserved, existing Federal tax laws must be modi-
20 fied or changed to provide tax incentives to land-
21 owners to attain the goal of conservation of endan-

1 gered and threatened species and the habitats they
2 depend upon.

3 **SEC. 3. ENHANCED DEDUCTION FOR THE DONATION OF A**
4 **CONSERVATION EASEMENT.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 170(h)(4) of the Internal Revenue Code of 1986 (defining
7 conservation purpose) is amended by striking “or” at the
8 end of clause (iii), by striking the period at the end of
9 clause (iv) and inserting “, or”, and by adding at the end
10 the following new clause:

11 “(v) the protection of a designated as endan-
12 gered or threatened species, species proposed for
13 listing and candidate species by the Secretary of the
14 Interior or the Secretary of Commerce.”

15 (b) ENHANCED VALUATION.—Section 170(h) of the
16 Internal Revenue Code of 1986 (defining qualified con-
17 servation contribution) is amended by adding at the end
18 the following new paragraph:

19 “(7) ENHANCED VALUATION OF PROPERTY
20 WITH ENDANGERED SPECIES AND OTHER SPE-
21 CIES.—For purposes of this section, the valuation of
22 a perpetual restriction granted to the Secretary of
23 the Interior or the Secretary of Commerce or to a
24 State agency implementing an endangered species
25 program for the purpose described in paragraph

1 (4)(A)(iii) shall be made by comparing the value of
 2 the property after the restriction is granted with the
 3 value of that same property without either the en-
 4 cumbrance of such restriction or any of the restric-
 5 tions placed on such property by the Endangered
 6 Species Act of 1973 (16 U.S.C. 1531 et seq.).”

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to contributions made after the
 9 date of the enactment of this Act.

10 **SEC. 4. EXCLUSION FROM ESTATE FOR REAL PROPERTY**

11 **SUBJECT TO ENDANGERED SPECIES CON-**
 12 **SERVATION AGREEMENT.**

13 (a) IN GENERAL.—Part IV of subchapter A of chap-
 14 ter 11 of the Internal Revenue Code of 1986 (relating to
 15 taxable estate) is amended by adding at the end the follow-
 16 ing new section:

17 **“SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**
 18 **GERED SPECIES CONSERVATION AGREE-**
 19 **MENT.**

20 “(a) GENERAL RULE.—For purposes of the tax im-
 21 posed by section 2001, the value of the taxable estate shall
 22 be determined by deducting from the value of the gross
 23 estate an amount equal to the adjusted value of real prop-
 24 erty included in the gross estate which is subject to an
 25 endangered species conservation agreement.

1 “(b) PROPERTY SUBJECT TO AN ENDANGERED SPE-
 2 CIES CONSERVATION AGREEMENT.—For purposes of this
 3 section—

4 “(1) IN GENERAL.—Real property shall be
 5 treated as subject to an endangered species con-
 6 servation agreement if—

7 “(A) each person who has an interest in
 8 such property (whether or not in possession)
 9 has entered into—

10 “(i) an endangered species conserva-
 11 tion agreement with respect to such prop-
 12 erty, and

13 “(ii) a written agreement with the
 14 Secretary consenting to the application of
 15 subsection (d), and

16 “(B) the executor of the decedent’s es-
 17 tate—

18 “(i) elects the application of this sec-
 19 tion, and

20 “(ii) files with the Secretary such en-
 21 dangered species conservation agreement.

22 “(2) ADJUSTED VALUE.—The adjusted value of
 23 any real property shall be its value for purposes of
 24 this chapter, reduced by any amount deductible

1 under section 2053(a)(4) with respect to the prop-
2 erty.

3 “(c) ENDANGERED SPECIES CONSERVATION AGREE-
4 MENT.—For purposes of this section—

5 “(1) IN GENERAL.—The term ‘endangered spe-
6 cies conservation agreement’ means a written agree-
7 ment entered into with the Secretary of the Interior
8 or the Secretary of Commerce—

9 “(A) which commits each person who
10 signed such agreement to carry out on the real
11 property activities or practices not otherwise re-
12 quired by law or to refrain from carrying out on
13 such property activities or practices that could
14 otherwise be lawfully carried out,

15 “(B) which is certified by such Secretary
16 as assisting in the conservation of any species
17 which is—

18 “(i) designated by such Secretary as
19 an endangered or threatened species under
20 the Endangered Species Act of 1973 (16
21 U.S.C. 1531 et seq.),

22 “(ii) proposed for such designation, or

23 “(iii) officially identified by such Sec-
24 retary as a candidate for possible future

1 protection as an endangered or threatened
2 species.

3 “(2) ANNUAL CERTIFICATION TO THE SEC-
4 RETARY BY THE SECRETARY OF THE INTERIOR OR
5 THE SECRETARY OF COMMERCE OF THE STATUS OF
6 ENDANGERED SPECIES CONSERVATION AGREE-
7 MENTS.—If the executor elects the application of
8 this section, the executor shall promptly give written
9 notice of such election to the Secretary of the Inte-
10 rior or the Secretary of Commerce. The Secretary of
11 the Interior or the Secretary of Commerce shall
12 thereafter annually certify to the Secretary that the
13 endangered species conservation agreement applica-
14 ble to any property for which such election has been
15 made remains in effect and is being satisfactorily
16 complied with.

17 “(d) RECAPTURE OF TAX BENEFIT IN CERTAIN
18 CASES.—

19 “(1) DISPOSITION OF INTEREST OR MATERIAL
20 BREACH.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (C), an additional tax in the
23 amount determined under subparagraph (B)
24 shall be imposed on any person on the earlier
25 of—

1 “(i) the disposition by such person of
2 any interest in property subject to an en-
3 dangered species conservation agreement
4 (other than a disposition described in sub-
5 paragraph (C)),

6 “(ii) the failure by such person to
7 comply with the terms of the endangered
8 species conservation agreement, or

9 “(iii) the termination of the endan-
10 gered species conservation agreement.

11 “(B) AMOUNT OF ADDITIONAL TAX.—The
12 amount of the additional tax imposed by sub-
13 paragraph (A) shall be an amount that bears
14 the same ratio of the fair market value of the
15 real property at the time of the event described
16 in subparagraph (A) to the ratio of the amount
17 by which the estate tax liability was reduced by
18 virtue of this section bore to the fair market
19 value of such property at the time the executor
20 filed the agreement under subsection (b)(1).
21 For purposes of this subparagraph, the term
22 ‘estate tax liability’ means the tax imposed by
23 section 2001 reduced by the credits allowable
24 against such tax.

1 “(C) EXCEPTION IF TRANSFEREE AS-
2 SUMES OBLIGATIONS OF TRANSFEROR.—Sub-
3 paragraph (A)(i) shall not apply if the trans-
4 feror and the transferee of the property enter
5 into a written agreement pursuant to which the
6 transferee agrees—

7 “(i) to assume the obligations imposed
8 on the transferor under the endangered
9 species conservation agreement,

10 “(ii) to assume personal liability for
11 any tax imposed under subparagraph (A)
12 with respect to any future event described
13 in subparagraph (A), and

14 “(iii) to notify the Secretary of the
15 Treasury and the Secretary of the Interior
16 to the Secretary of Commerce that the
17 transferee has assumed such obligations
18 and liability. If a transferee enters into an
19 agreement described in clauses (i), (ii), and
20 (iii), such transferee shall be treated as
21 signatory to the endangered species con-
22 servation agreement the transferor entered
23 into.

24 “(2) DUE DATE OF ADDITIONAL TAX.—The ad-
25 ditional tax imposed by paragraph (1) shall become

1 due and payable on the day that is 6 months after
2 the date of the disposition referred to in paragraph
3 (1)(A)(i) or, in the case of an event described in
4 clause (ii) or (iii) of paragraph (1)(A), on April 15
5 of the calendar year following any year in which the
6 Secretary of the Interior or the Secretary of Com-
7 merce fails to provide the certification required
8 under subsection (c)(2).

9 “(e) STATUTE OF LIMITATIONS.—If a taxpayer in-
10 curs a tax liability pursuant to subsection (d)(1)(A),
11 then—

12 “(1) the statutory period for the assessment of
13 any additional tax imposed by subsection (d)(1)(A)
14 shall not expire before the expiration of 3 years from
15 the date the Secretary is notified (in such manner
16 as the Secretary may by regulation prescribe) of the
17 incurring of such tax liability, and

18 “(2) such additional tax may be assessed before
19 the expiration of such 3-year period notwithstanding
20 the provisions of any other law or rule of law that
21 would otherwise prevent such assessment.

22 “(f) ELECTION AND FILING OF AGREEMENT.—The
23 election under this section shall be made on the return
24 of the tax imposed by section 2001. Such election, and
25 the filing under subsection (a) of an endangered species

1 conservation agreement, shall be made in such manner as
2 the Secretary shall by regulation provide.

3 “(g) APPLICATION OF THIS SECTION TO INTERESTS
4 IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The
5 Secretary shall prescribe regulations setting forth the ap-
6 plication of this section in the case of an interest in a part-
7 nership, corporation, or trust which, with respect to a de-
8 cedent, is an interest in a closely held business (within
9 the meaning of paragraph (1) of section 6166(b)). For
10 purposes of the preceding sentence, an interest in a discre-
11 tionary trust all the beneficiaries of which are heirs of the
12 decedent shall be treated as a present interest.”

13 “(h) CLERICAL AMENDMENT.—The table of sections
14 for part IV of subchapter A of chapter 11 of the Internal
15 Revenue Code of 1986 is amended by adding at the end
16 of the following new item:

“Sec. 2057. Certain real property subject to endangered species
conservation agreement.”

17 “(i) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to estates of decedents dying after
19 the date of the enactment of this Act.

1 **SEC. 5 INCOME TAX INCENTIVES TO PRESERVE LAND TO**
 2 **PROTECT ENDANGERED SPECIES. EXCLU-**
 3 **SION OF 75 PERCENT OF GAIN ON SALES OF**
 4 **LAND TO CERTAIN PERSONS FOR THE PRO-**
 5 **TECTION OF HABITAT.**

6 (a) IN GENERAL.—Part I of subchapter P of chapter
 7 1 (relating to treatment of capital gains) is amended by
 8 adding at the end the following new section:

9 **“SEC 1203. 75 PERCENT EXCLUSION FOR GAIN ON SALES OF**
 10 **LAND TO CERTAIN PERSONS FOR THE PRO-**
 11 **TECTION OF HABITAT.**

12 “(a) EXCLUSION.—Gross income shall not include 75
 13 percent of any gain from the sale of any land to a con-
 14 servation purchaser if—

15 “(1) such land was owned by the taxpayer or a
 16 member of the taxpayer’s family (as defined in sec-
 17 tion 2032A(e)(2)) at all times during the 3-year pe-
 18 riod ending on the date of the sale, and

19 “(2) such land is being acquired by a conserva-
 20 tion purchaser for the purpose of protecting the
 21 habitat of endangered and threatened species, spe-
 22 cies proposed for listing and candidate species.

23 “(b) CONSERVATION PURCHASER.—For purposes of
 24 this section, the term ‘conservation purchaser’ means—

25 “(1) any agency of the United States or of any
 26 State or local government, and

1 “(2) any qualified organization.

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