Calendar No. 213

115TH CONGRESS, *1st Session* | SENATE | REPORT 115–148

BROWNFIELDS UTILIZATION, INVESTMENT, AND LOCAL DEVELOPMENT ACT OF 2017

SEPTEMBER 7, 2017.—Ordered to be printed

Mr. BARRASSO, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 822]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works to which was referred the bill (S. 822) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to modify provisions relating to grants, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

GENERAL STATEMENTS AND BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (also known as the "Superfund" law) was enacted to provide broad Federal authority to respond to releases or threatened releases of hazardous substances that may endanger public health or the environment, including provisions to help clean up the nation's worst contaminated sites and require responsible parties to pay for the cleanups. Currently, more than 1,300 contaminated sites are on the U.S. Environmental Protection Agency's (EPA) Superfund program's National Priorities List. Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property. EPA estimates there are more than 450,000 brownfield sites across the country. Concern over CERCLA's strict joint and several liability provisions is one factor that inhibited cleanup at brownfield sites where the extent of con-

tamination may have been unknown and where there was no viable party available to assess the site or pay for the cleanup. Many states and local governments operate voluntary programs to promote the cleanup and reuse of these properties. EPA administratively created its brownfields initiative in 1993. Congress began appropriating money specifically for the EPA brownfields grant program in fiscal year 1997. However, concerns remained about potential liability under CERCLA for brownfields cleanups.

In 2001, the Senate passed S. 350 by a vote of 99–0 to amend CERCLA to establish the brownfields program, authorize up to $250 million in funding for grants, and provide relief from CERCLA liability for certain parties who meet specified conditions, such as contiguous property owners, prospective purchasers, and innocent landowners. S. 350 was incorporated into Title II of the "Small Business Liability Relief and Brownfields Revitalization Act," which passed the House of Representatives by voice vote and the Senate by unanimous consent on December 20, 2001. President George W. Bush signed the bill into law (P.L. 107–118) on January 11, 2002.

Section 104 of CERCLA was amended to authorize EPA to provide grants and technical assistance to State and local governmental entities, and other stakeholders to assess, safely clean up, and sustainably reuse brownfields. Cleaning up and reinvesting in these properties protects human health and the environment, reduces blight, increases local tax bases, facilitates job growth, and often utilizes existing infrastructure. Definitions for "Brownfield site," "Bona fide prospective purchaser" and "Eligible response site" were also added to section 101 of CERCLA.

S. 822, as amended, would reauthorize the EPA brownfields program at current funding levels through fiscal year 2020. The BUILD Act would improve the existing grant process by increasing the dollar limit for cleanup grants, authorizing EPA to make multipurpose grants, expanding grant eligibility for certain publicly owned sites and non-profit organizations, authorizing grants for waterfront brownfields properties located adjacent to bodies of water or in floodplains and sites that can be used for clean energy development. The bill would also allow grant recipients to use a portion of grant funds for administrative costs, provide technical assistance grants to rural areas, small communities, and disadvantaged areas, and authorize up to $2 million per fiscal year in targeted funding grants to States. Finally, the bill would expand existing liability protections for states and local governments and lessees and add new liability protections for Alaska Native villages or Alaska Native Village Corporations that received contaminated property from the U.S. government under the Alaska Native Claims Settlement Act.

PURPOSE OF THE LEGISLATION

The bill authorizes the appropriation of $250 million annually through fiscal year 2020 for EPA to provide brownfields cleanup grants and programs, would amend section 104(k) of CERCLA (42 U.S.C. 9604(k)) to improve the existing grant process by increasing the limit for cleanup grants, expanding grant eligibility, and prioritizing funding opportunities for certain brownfield sites, and

would expand liability protections for certain owners and operators, among other purposes.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the "Brownfields Utilization, Investment, and Local Development Act of 2017" or the "BUILD Act."

Section 2. Expanded eligibility for nonprofit organizations

Section 2 expands the eligibility for Brownfields grants for nonprofit organizations to include certain nonprofit organizations, limited liability corporations, limited partnerships, and community development entities.

Section 3. Multipurpose brownfield grants

Section 3 authorizes EPA to make multi-purpose grants up to $950,000, which provide greater certainty for long-term project financing. Limits all grants under this section to 15 percent of appropriations.

Section 4. Treatment of certain publicly owned brownfield sites

Section 4 allows government entities that acquired brownfields property prior to January 11, 2002, that do not qualify as a bona fide prospective purchaser under section 101(40) of CERCLA, to be eligible to receive grants so long as the government entity did not cause or contribute to a release or threatened release of a hazardous substance at the property.

Section 5. Increased funding for remediation grants

Section 5 increases funding limit for each site from the current $200,000 to $500,000 for each site. This section also authorizes the EPA to waive that limit, up to $650,000 for a site, based on the anticipated level of contamination, size, or ownership status of the site.

Section 6. Allowing administrative costs for grant recipients

Section 6 allows eligible entities to use up to 8 percent of their brownfield grant funding for administrative costs.

Section 7. Small or disadvantaged community technical assistance

Section 7 directs EPA to give priority in providing technical assistance grants of up to $7,500 to eligible entities in small communities, Indian tribes, rural areas, and disadvantaged areas. This section defines a "disadvantaged area" as an area with an annual median household income that is less than 80 percent of the Statewide annual median household income, as determined by the latest available decennial census. This section also defines a "small community" as a community with a population of not more than 15,000 individuals, as determined by the latest available decennial census. This section limits all grants under this section to $600,000.

Section 8. Waterfront brownfield grants

Section 8 directs EPA in providing brownfield grants to give consideration to waterfront brownfield sites located adjacent to bodies of water or federally designated floodplains.

Section 9. Clean energy brownfield grants

Section 9 requires EPA to establish a program to provide grants of up to $500,000 to eligible entities to locate clean energy projects at brownfield sites.

Section 10. Targeted funding for States

Section 10 authorizes EPA to use up to $2 million each fiscal year to provide targeted grants to States.

Section 11. Clarification of owner or operator

Section 11 provides additional protection from liability under CERCLA as follows:

(a) ACQUISITION BY STATE OR LOCAL GOVERNMENT AS SOVEREIGN.—Subsection (a) amends the exclusion from the definition of "owner or operator" that currently applies to involuntary acquisitions of property by states or local governments. The exclusion is expanded to include property voluntarily acquired in connection with law enforcement activity, through the exercise of eminent domain authority, and through other circumstances in which a state or local government acquires title, voluntarily or involuntarily, by virtue of its function as a sovereign. This subsection also makes conforming changes.

(b) ALASKA NATIVE VILLAGE AND NATIVE CORPORATION RELIEF.—Subsection (b) adds a new exclusion from the definition of "owner or operator" for Alaska Native villages or Alaska Native Corporations or their successors that received a contaminated facility from the U.S. government under the Alaska Native Claims Settlement Act. The same conditions that apply to the current law state and local government exclusion are included in this new exclusion. Without this exclusion the villages and corporations could be held liable for contamination caused by the U.S. government and are not eligible for brownfields grants.

(c) PROSPECTIVE PURCHASERS AND LESSEES.—Subsection (c) extends the defense from liability for bona fide prospective purchasers (BFPPs) to lessees, whether or not the owner is BFPP, consistent with current EPA enforcement discretion guidance, and makes conforming changes.

Section 12. Authorization of appropriations

Section 11 authorizes appropriations of $250 million annually through fiscal year 2020.

LEGISLATIVE HISTORY

Senators Inhofe, Markey, Rounds, Booker, and Crapo introduced S. 822, the "Brownfields Utilization, Investment, and Local Development Act of 2017" or the "BUILD Act," on April 4, 2017. The bill was read twice and referred to the Senate Committee on Environment and Public Works. Senators King, Whitehouse, Carper, Gillibrand, Warren and [Sullivan] are additional co-sponsors. The Com-

mittee met on July 12, 2017, and ordered S. 822 favorably reported by voice vote with an amendment in the nature of a substitute.

HEARINGS

On March 2, 2016, the Committee on Environment and Public Works held a legislative hearing on S. 1479, Brownfields Utilization, Investment, and Local Development Act of 2015, similar legislation that passed the Committee and the Senate in the 114th Congress.

ROLL CALL VOTES

The Committee on Environment and Public Works met to consider S. 822 on July 12, 2017. The bill was ordered reported favorably by voice vote with an amendment in the nature of a substitute. No roll call votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 822 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has found, "S. 822 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments."

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report, if available. That statement follows:

AUGUST 17, 2017.

Hon. JOHN BARRASSO,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 822, the Brownfields Utilization, Investment, and Local Development Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

S. 822—Brownfields Utilization, Investment, and Local Development Act of 2017

S. 822 would authorize the appropriation of $250 million annually over the 2018–2020 period for the Environmental Protection

Agency (EPA) to provide grants to clean up brownfields and to support state brownfield programs. (Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the use or redevelopment of the property.) Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 822 would cost $702 million over the 2018–2022 period; the remainder would be spent in years after 2022.

Enacting S. 822 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 822 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 822 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 822 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Cleanup Grants:							
Authorization Level	0	200	200	200	0	0	600
Estimated Outlays	0	68	142	172	118	52	552
State Response Program Grants:							
Authorization Level	0	50	50	50	0	0	150
Estimated Outlays	0	3	43	50	48	8	150
Total Changes:							
Authorization Level	0	250	250	250	0	0	750
Estimated Outlays	0	71	185	222	166	60	702

Note: Components do not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that S. 822 will be enacted near the end of fiscal year 2017, that the specified amounts will be appropriated in each year starting in 2018, and that outlays will follow historical spending patterns for the brownfields program. The Congress provided $126 million for brownfields grant programs in 2017.

Pay-As-You-Go considerations: None.

Increase in long-term deficit and direct spending: CBO estimates that enacting S. 822 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: S. 822 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit state, local, and tribal governments by authorizing federal grants to support brownfield cleanup activities and programs. Any costs those governments might incur, including matching contributions, would result from participating in a voluntary federal program.

Previous CBO estimate: On August 4, 2017, CBO transmitted a cost estimate for H.R. 1758, the Brownfields Reauthorization Act of 2017, as ordered reported by the House Committee on Transportation and Infrastructure on July 27, 2017. H.R. 1758 is similar to

S. 822. However, CBO's estimated costs for S. 822 are lower because S. 822 would authorize appropriations through 2020, whereas H.R. 1758 would authorize appropriations through 2022.

Estimate prepared by: Federal costs: Jon Sperl; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in ⟦black brackets⟧, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * * * *

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

SEC. 101. For purpose of this title—

(1) * * *

* * * * * * *

(20)(A) The term "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed ⟦due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government,⟧ *to a unit of State or local government through seizure or otherwise in connection with law enforcement activity; through bankruptcy, tax delinquency, abandonment, or escheat; through any other involuntary transfer or acquisition; through the exercise of eminent domain authority by purchase or condemnation; or through other circumstances in which the unit of State or local government acquires title by virtue of its function as a sovereign,* any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in [section 107(a) (3) or (4)] *paragraph (3) or (4) of section 107(a),* (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term "owner or operator" does not include a unit of State or local government [which acquired ownership or control involuntarily rough seizure or otherwise in connection with law enforcement activity through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue] *that acquired ownership or control through seizure or otherwise in connection with law enforcement activity; through bankruptcy, tax delinquency, abandonment, or escheat; through any other involuntary transfer or acquisition; through the exercise of eminent domain authority by purchase or condemnation; or through other circumstances in which the government acquires title by virtue* of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.

(E) EXCLUSION OF CERTAIN ALASKA NATIVE VILLAGES AND NATIVE CORPORATIONS.—

(i) IN GENERAL.—*The term 'owner or operator' does not include—*

(I) a Native village or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) that received a contaminated facility from the United States Government under that Act (43 U.S.C. 1601 et seq.); or

(II) a successor in interest to a contaminated facility referred to in subclause (I) that was conveyed to the successor in interest under section 14(c) of that Act (43 U.S.C. 1613(c)).

(ii) APPLICABILITY.—*Clause (i) does not apply to any Native village, Native Corporation, or successor in interest that has caused or contributed to the release or threatened release of a hazardous substance from a contaminated facility referred to in that clause.*

(iii) LIABILITY.—*Any Native village, Native Corporation, or successor in interest that causes or contributes to the release or threatened release of a hazardous substance from a contaminated facility referred to in*

clause (i) shall be subject to the provisions of this Act in the same manner and to the same extent, procedurally and substantively, as any nongovernmental entity, including liability under section 107.

[(E)] *(F)* 5Exclusion of lenders not participants in management.—

(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY.—The term "owner or operator" does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

(ii) FORECLOSURE.—The term "owner or operator" does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 107(d)(1) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

[(F)] *(G)* PARTICIPATION IN MANAGEMENT.—For purposes of [subparagraph (E)] *subparagraph (F)*—

(i) the term "participate in management"—

(I) * * *

* * * * * * *

[(G)] *(H)* OTHER TERMS.—As used in this Act:

(i) EXTENSION OF CREDIT.—The term "extension of credit" includes a lease finance transaction—

(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. [1813)] *1813))* with regulations issued by the National Credit Union Administration Board, as appropriate.

(ii) FINANCIAL OR ADMINISTRATIVE FUNCTION.—The term "financial or administrative function" includes a function such as that of a credit manager, accounts

payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

* * * * * * *

(35)(A) The term "contractual relationship", for the purpose of section 107(b)(3) includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause [(i), (ii), or (iii)] *clause (i) or (ii)* is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

[(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.]

[(iii)] *(ii)* The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 107(b)(3) (a) and (b), provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

* * * * * * *

[(40) BONA FIDE PROSPECTIVE PURCHASER.—The term "bona fide prospective purchaser" means a person (or a tenant of a person) that acquires ownership of a facility after the date of the enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:

(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of]

(40) BONA FIDE PROSPECTIVE PURCHASER.—

(A) IN GENERAL.—*The term 'bona fide prospective purchaser' means—*

(i) a person that—

(I) after January 11, 2002, acquires ownership of a facility; and

(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B);

(ii) a tenant of a person described in clause (i);

(iii) a tenant of a person that—

(I) formerly met the criteria described in clause (i) but no longer meets that criteria due to a factor unrelated to any action of the tenant; and

(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i), (iii), (iv), (v), (vi), (vii), and (viii) of subparagraph (B); and

(iv) a person that—

(I) holds a leasehold interest in a facility; and

(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B).

(B) CRITERIA.—*The criteria described in this subparagraph are as follows:*

(i) DISPOSAL PRIOR TO ACQUISITION.—*All disposal of* hazardous substances at the facility occurred before the person acquired the facility.

(C) SPECIAL RULE.—*With respect to a facility, in any case in which the ownership or operational control held by a person is established by a tenancy or lease, the person shall be considered to be a bona fide prospective purchaser only if the person establishes by a preponderance of the evidence that the tenancy or lease is not designed to avoid liability under this Act by any person that—*

(i) does not meet the criteria applicable to that person under subparagraph (B); or

(ii) is liable under paragraph (3) or (4) of section 107(a).

[(B)**]**

(ii) INQUIRIES.—

[(i)**]**

(I) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with **[**clauses (ii) and (iii)**]** *subclauses (II) and (III)*.

[(ii)**]**

(II) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this **[**subparagraph**]** *clause*.

[(iii)**]**

(III) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this **[**subparagraph**]** *clause*.

[(C)**]**

*(iii)*NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

[(D)**]**

*(iv)*CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

[(i)]

(I) stop any continuing release;

[(ii)]

(II) prevent any threatened future release; and

[(iii)]

(III) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

[(E)]

*(v)*COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

[(F)]

*(vi)*INSTITUTIONAL CONTROL.—The person—

[(i)]

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

[(ii)]

(II) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

[(G)]

*(vii)*REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this Act.

[(H)]

*(viii)*NO AFFILIATION.—The person is not—

[(i)]

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

[(I)]

(aa) any direct or indirect familial relationship; or

[(II)]

(bb) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed*, by a tenancy, by the instruments by which a leasehold interest in the facility is created,* or by a contract for the sale of goods or services); or

[(ii)]

(II) the result of a reorganization of a business entity that was potentially liable.

* * * * * * *

SEC. 104. (a)(1) * * *

* * * * * * *

(k) BROWNFIELDS REVITALIZATION FUNDING.—

(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term "eligible entity" means—

(A) a general purpose unit of local government;

(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

(C) a government entity created by a State legislature;

(D) a regional council or group of general purpose units of local government;

(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

(F) a State;

(G) an Indian Tribe other than in Alaska; **[**or**]**

(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community**[**.**]** *;*

(I) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code;

(J) a limited liability corporation in which all managing members are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I);

(K) a limited partnership in which all general partners are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I); or

(L) a qualified community development entity (as defined in section 45D(c)(1) of the Internal Revenue Code of 1986).

(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM.—

(A) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to—

(i) * * *

* * * * * * *

(C) EXEMPTION FOR CERTAIN PUBLICLY OWNED BROWNFIELD SITES.—*Notwithstanding any other provision of law, an eligible entity that is a governmental entity may receive a grant under this paragraph for property acquired by that governmental entity prior to January 11, 2002, even if the governmental entity does not qualify as a bona fide prospective purchaser (as that term is defined in section 101(40)), so long as the eligible entity has not caused or*

contributed to a release or threatened release of a hazardous substance at the property.

(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION.—

(A) GRANTS PROVIDED BY THE PRESIDENT.—[Subject to paragraphs (4) and (5)] *subject to paragraphs (5) and (6)*, the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed [$200,000 for each site to be remediated] *$500,000 for each site to be remediated, which limit may be waived by the Administrator, but not to exceed a total of $650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site*.

(4) MULTIPURPOSE BROWNFIELDS GRANTS.—

(A) IN GENERAL.—*Subject to subparagraph (D) and paragraphs (5) and (6), the Administrator shall establish a program to provide multipurpose grants to an eligible entity based on the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in a proposed area.*

(B) GRANT AMOUNTS.—

(i) INDIVIDUAL GRANT AMOUNTS.—*Each grant awarded under this paragraph shall not exceed $950,000.*

(ii) CUMULATIVE GRANT AMOUNTS.—*The total amount of grants awarded for each fiscal year under this paragraph shall not exceed 15 percent of the funds made available for the fiscal year to carry out this subsection.*

(C) CRITERIA.—*In awarding a grant under this paragraph, the Administrator shall consider the extent to which an eligible entity is able—*

(i) to provide an overall plan for revitalization of the 1 or more brownfield sites in the proposed area in which the multipurpose grant will be used;

(ii) to demonstrate a capacity to conduct the range of eligible activities that will be funded by the multipurpose grant; and

(iii) to demonstrate that a multipurpose grant will meet the needs of the 1 or more brownfield sites in the proposed area.

(D) CONDITION.—*As a condition of receiving a grant under this paragraph, each eligible entity shall expend the full amount of the grant not later than the date that is 3 years after the date on which the grant is awarded to the eligible entity unless the Administrator, in the discretion of the Administrator, provides an extension.*

[(4)] *(5)* GENERAL PROVISIONS.—

(A) MAXIMUM GRANT AMOUNT.—

(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT.—

(I) IN GENERAL.—* * *

* * * * * * *

(B) PROHIBITION.—

(i) IN GENERAL.—No part of a grant or loan under this subsection may be used for the payment of—

(I) a penalty or fine;

(II) a Federal cost-share requirement;

[(III) an administrative cost;]

[(IV)] *(III)* a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or

[(V)] *(IV)* a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.

[(ii) EXCLUSIONS.—For the purposes of clause (i)(III), the term "administrative cost" does not include the cost of—

[(I) investigation and identification of the extent of contamination;

[(II) design and performance of a response action; or

[(III) monitoring of a natural resource.]

[(iii)] *(ii)* EXCEPTION.—[Notwithstanding clause (i)(IV)] *Notwithstanding clause (i)(III)*, the Administrator may use up to 25 percent of the funds made available to carry out this subsection to make a grant or loan under this subsection to eligible entities that satisfy all of the elements set forth in section 101(40) to qualify as a bona fide prospective purchaser, except that the date of acquisition of the property was on or before January 11, 2002.

(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) INSURANCE.—A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(E) ADMINISTRATIVE COSTS.—

(i) IN GENERAL.—*An eligible entity may use up to 8 percent of the amounts made available under a grant or loan under this subsection for administrative costs.*

(ii) RESTRICTION.—*For purposes of clause (i), the term 'administrative costs' does not include—*

(I) investigation and identification of the extent of contamination;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

[(5)**]** *(6)* GRANT APPLICATIONS.—

(A) SUBMISSION.—

(i) IN GENERAL.— * * *

* * * * * * *

[(6)**]** *(7)* IMPLEMENTATION OF BROWNFIELDS PROGRAMS.—

(A) ESTABLISHMENT OF PROGRAM.—**[**The Administrator may provide,**]**

(i) DEFINITIONS.—*In this subparagraph:*

(I) DISADVANTAGED AREA.—*The term 'disadvantaged area' means an area with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the latest available decennial census.*

(II) SMALL COMMUNITY.—*The term 'small community' means a community with a population of not more than 15,000 individuals, as determined by the latest available decennial census.*

(ii) ESTABLISHMENT OF PROGRAM.—*The Administrator shall establish a program to provide grants that provide,* or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(iii) SMALL OR DISADVANTAGED COMMUNITY RECIPIENTS.—

(I) IN GENERAL.—*Subject to subclause (II), in carrying out the program under clause (ii), the Administrator shall use not more than $600,000 of the amounts made available to carry out this paragraph to provide grants to States that receive amounts under section 128(a) to assist small communities, Indian tribes, rural areas, or disadvantaged areas in achieving the purposes described in clause (ii).*

(II) LIMITATION.—*Each grant awarded under subclause (I) shall be not more than $7,500.*

(B) FUNDING RESTRICTIONS.—The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

[(7)**]** *(8)* AUDITS.—

(A) IN GENERAL.—* * *

* * * * * * *

[(8)] *(9)* LEVERAGING.—An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

[(9)] *(10)* AGREEMENTS.—Each grant or loan made under this subsection shall—

(A) * * *

* * * * * * *

(11) WATERFRONT BROWNFIELD SITES.—

(A) DEFINITION OF WATERFRONT BROWNFIELD SITE.—*In this paragraph, the term 'waterfront brownfield site' means a brownfield site that is adjacent to a body of water or a federally designated floodplain.*

(B) REQUIREMENTS.—*In providing grants under this subsection, the Administrator shall—*

(i) take into consideration whether the brownfield site to be served by the grant is a waterfront brownfield site; and

(ii) give consideration to waterfront brownfield sites.

(12) CLEAN ENERGY PROJECTS AT BROWNFIELD SITES.—

(A) DEFINITION OF CLEAN ENERGY PROJECT.—*In this paragraph, the term 'clean energy project' means—*

(i) a facility that generates renewable electricity from wind, solar, or geothermal energy; and

(ii) any energy efficiency improvement project at a facility, including combined heat and power and district energy.

(B) ESTABLISHMENT.—*The Administrator shall establish a program to provide grants—*

(i) to eligible entities to carry out inventory, characterization, assessment, planning, feasibility analysis, design, or remediation activities to locate a clean energy project at 1 or more brownfield sites; and

(ii) to capitalize a revolving loan fund for the purposes described in clause (i).

(C) MAXIMUM AMOUNT.—*A grant under this paragraph shall not exceed $500,000.*

[(10)] *(13)* FACILITY OTHER THAN BROWNFIELD SITE.—The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

[(11)] *(14)* EFFECT ON FEDERAL LAWS.—Nothing in this subsection affects any liability or response authority under any Federal law, including—

(A) this Act (including the last sentence of section 101(14));

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

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

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

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

[(12)] *(15)* FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection 200,000,000 for each of fiscal years 2002 through [2006] *2020*.

(B) USE OF CERTAIN FUNDS.—Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).

(C) TARGETED FUNDING.—*Of the amounts made available under subparagraph (A) for a fiscal year, the Administrator may use not more than $2,000,000 to provide grants to States for purposes authorized under section 128(a), subject to the condition that each State that receives a grant under this subparagraph shall have used at least 50 percent of the amounts made available to that State in the previous fiscal year to carry out assessment and remediation activities under section 128(a).*

* * * * * * *

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1)* * *

* * * * * * *

(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the [purchaser's] *bona fide prospective purchaser* being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

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SEC. 128. STATE RESPONSE PROGRAMS.

(a) ASSISTANCE TO STATES.—

(1) IN GENERAL.—

(A) STATES.—* * *

* * * * * * *

(3) FUNDING.—There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through [2006] *2020*.

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