

1 **DIVISION N—BUILD ACT**

2 **SECTION 1. SHORT TITLE.**

3 This division may be cited as the “Brownfields Utili-
4 zation, Investment, and Local Development Act of 2018”
5 or the “BUILD Act”.

6 **SEC. 2. REDEVELOPMENT CERTAINTY FOR GOVERN-**
7 **MENTAL ENTITIES.**

8 Section 101(20)(D) of the Comprehensive Environ-
9 mental Response, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9601(20)) is amended by striking “own-
11 ership or control” and all that follows through “by virtue”
12 and inserting “ownership or control through seizure or
13 otherwise in connection with law enforcement activity, or
14 through bankruptcy, tax delinquency, abandonment, or
15 other circumstances in which the government acquires title
16 by virtue”.

17 **SEC. 3. ALASKA NATIVE VILLAGE AND NATIVE CORPORA-**
18 **TION RELIEF.**

19 Section 101(20) of the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9601(20)) is amended—

22 (1) by redesignating subparagraphs (E)
23 through (G) as subparagraphs (F) through (H), re-
24 spectively;

1 (2) by inserting after subparagraph (D) the fol-
2 lowing:

3 “(E) EXCLUSION OF CERTAIN ALASKA NA-
4 TIVE VILLAGES AND NATIVE CORPORATIONS.—

5 “(i) IN GENERAL.—The term ‘owner
6 or operator’ does not include, with respect
7 to a facility conveyed to a Native village or
8 Native Corporation (as those terms are de-
9 fined in section 3 of the Alaska Native
10 Claims Settlement Act) under the Alaska
11 Native Claims Settlement Act—

12 “(I) the Native village or Native
13 Corporation that received the facility
14 from the United States Government;
15 or

16 “(II) a successor in interest to
17 which the facility was conveyed under
18 section 14(c) of such Act.

19 “(ii) LIMITATION.—The exclusion pro-
20 vided under this subparagraph shall not
21 apply to any entity described in clause (i)
22 that causes or contributes to a release or
23 threatened release of a hazardous sub-
24 stance from the facility conveyed as de-
25 scribed in such clause.”;

1 (3) in subparagraph (G) (as so redesignated),
2 in the matter preceding clause (i), by striking “sub-
3 paragraph (E)” and inserting “subparagraph (F)”;
4 and

5 (4) in clause (i)(II) of subparagraph (H) (as so
6 redesignated), by striking “1813)” and inserting
7 “1813))”.

8 **SEC. 4. PETROLEUM BROWNFIELD ENHANCEMENT.**

9 Section 101(39)(D)(ii)(II) of the Comprehensive En-
10 vironmental Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9601(39)(D)(ii)(II)) is amended by
12 amending item (bb) to read as follows:

13 “(bb) is a site for which there is no viable responsible
14 party and that is determined by the Administrator or the
15 State, as appropriate, to be a site that will be assessed,
16 investigated, or cleaned up by a person that is not poten-
17 tially liable for cleaning up the site under this Act or any
18 other law pertaining to the cleanup of petroleum products;
19 and”.

20 **SEC. 5. PROSPECTIVE PURCHASERS AND LESSEES.**

21 (a) BONA FIDE PROSPECTIVE PURCHASER.—Section
22 101(40) of the Comprehensive Environmental Response,
23 Compensation, and Liability Act of 1980 (42 U.S.C.
24 9601(40)) is amended—

25 (1) in subparagraph (B)—

1 (A) by redesignating clauses (i) through
2 (iii) as subclauses (I) through (III), respec-
3 tively, and indenting appropriately;

4 (B) in subclause (I) (as so redesignated),
5 by striking “clauses (ii) and (iii)” and inserting
6 “subclauses (II) and (III)”;

7 (C) in subclause (II) (as so redesignated),
8 by striking “subparagraph” and inserting
9 “clause”; and

10 (D) in subclause (III) (as so redesignated),
11 by striking “subparagraph” and inserting
12 “clause”;

13 (2) in subparagraph (D), by redesignating
14 clauses (i) through (iii) as subclauses (I) through
15 (III), respectively, and indenting appropriately;

16 (3) in subparagraph (F), by redesignating
17 clauses (i) and (ii) as subclauses (I) and (II), respec-
18 tively, and indenting appropriately;

19 (4) in subparagraph (H)—

20 (A) in clause (i)—

21 (i) in subclause (II), by inserting “,
22 by a tenancy, by the instruments by which
23 a leasehold interest in the facility is cre-
24 ated,” after “financed”; and

1 (ii) by redesignating subclauses (I)
2 and (II) as items (aa) and (bb), respec-
3 tively, and indenting appropriately; and

4 (B) by redesignating clauses (i) and (ii) as
5 subclauses (I) and (II), respectively, and in-
6 denting appropriately;

7 (5) by redesignating subparagraphs (B)
8 through (H) as clauses (ii) through (viii), respec-
9 tively, and indenting appropriately; and

10 (6) by striking the paragraph designation and
11 heading and all that follows through “All disposal
12 of” in subparagraph (A) and inserting the following:

13 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

14 “(A) IN GENERAL.—The term ‘bona fide
15 prospective purchaser’ means, with respect to a
16 facility—

17 “(i) a person who—

18 “(I) acquires ownership of the fa-
19 cility after January 11, 2002; and

20 “(II) establishes by a preponder-
21 ance of the evidence each of the cri-
22 teria described in clauses (i) through
23 (viii) of subparagraph (B); and

24 “(ii) a person—

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1 “(I) who acquires a leasehold in-
2 terest in the facility after January 11,
3 2002;

4 “(II) who establishes by a pre-
5 ponderance of the evidence that the
6 leasehold interest is not designed to
7 avoid liability under this Act by any
8 person; and

9 “(III) with respect to whom any
10 of the following conditions apply:

11 “(aa) The owner of the facil-
12 ity that is subject to the lease-
13 hold interest is a person de-
14 scribed in clause (i).

15 “(bb)(AA) The owner of the
16 facility that is subject to the
17 leasehold interest was a person
18 described in clause (i) at the time
19 the leasehold interest was ac-
20 quired, but can no longer estab-
21 lish by a preponderance of the
22 evidence each of the criteria de-
23 scribed in clauses (i) through
24 (viii) of subparagraph (B) due to
25 circumstances unrelated to any

1 action of the person who holds
2 the leasehold interest; and

3 “(BB) the person who holds
4 the leasehold interest establishes
5 by a preponderance of the evi-
6 dence each of the criteria de-
7 scribed in clauses (i), (iii), (iv),
8 (v), (vi), (vii), and (viii) of sub-
9 paragraph (B).

10 “(cc) The person who holds
11 the leasehold interest establishes
12 by a preponderance of the evi-
13 dence each of the criteria de-
14 scribed in clauses (i) through
15 (viii) of subparagraph (B).

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

18 “(i) DISPOSAL PRIOR TO ACQUI-
19 TION.—All disposal of”.

20 (b) LIMITATION ON LIABILITY.—Section 107(r)(1) of
21 the Comprehensive Environmental Response, Compensa-
22 tion, and Liability Act of 1980 (42 U.S.C. 9607(r)(1)) is
23 amended by striking “purchaser’s” and inserting “bona
24 fide prospective purchaser”.

1 **SEC. 6. EXPANDED ELIGIBILITY FOR NONPROFIT ORGANI-**
2 **ZATIONS.**

3 Section 104(k)(1) of the Comprehensive Environ-
4 mental Response, Compensation, and Liability Act of
5 1980 (42 U.S.C. 9604(k)(1)) is amended—

6 (1) in subparagraph (G), by striking “or” after
7 the semicolon;

8 (2) in subparagraph (H), by striking the period
9 at the end and inserting a semicolon; and

10 (3) by adding at the end the following:

11 “(I) an organization described in section
12 501(c)(3) of the Internal Revenue Code of 1986
13 and exempt from taxation under section 501(a)
14 of that Code;

15 “(J) a limited liability corporation in which
16 all managing members are organizations de-
17 scribed in subparagraph (I) or limited liability
18 corporations whose sole members are organiza-
19 tions described in subparagraph (I);

20 “(K) a limited partnership in which all
21 general partners are organizations described in
22 subparagraph (I) or limited liability corpora-
23 tions whose sole members are organizations de-
24 scribed in subparagraph (I); or

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

4 **SEC. 7. TREATMENT OF CERTAIN PUBLICLY OWNED**
5 **BROWNFIELD SITES.**

6 Section 104(k) of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (42
8 U.S.C. 9604(k)) is amended—

9 (1) in paragraph (2), by adding at the end the
10 following:

11 “(C) **EXEMPTION FOR CERTAIN PUBLICLY**
12 **OWNED BROWNFIELD SITES.**—Notwithstanding
13 paragraph (5)(B)(iii), an eligible entity de-
14 scribed in any of subparagraphs (A) through
15 (H) of paragraph (1) may receive a grant under
16 this paragraph for property acquired by that el-
17 igible entity prior to January 11, 2002, even if
18 the eligible entity does not qualify as a bona
19 fide prospective purchaser, so long as the eligi-
20 ble entity has not caused or contributed to a re-
21 lease or threatened release of a hazardous sub-
22 stance at the property.”; and

23 (2) in paragraph (3), by adding at the end the
24 following:

1 “(E) EXEMPTION FOR CERTAIN PUBLICLY
2 OWNED BROWNFIELD SITES.—Notwithstanding
3 paragraph (5)(B)(iii), an eligible entity de-
4 scribed in any of subparagraphs (A) through
5 (H) of paragraph (1) may receive a grant or
6 loan under this paragraph for property acquired
7 by that eligible entity prior to January 11,
8 2002, even if the eligible entity does not qualify
9 as a bona fide prospective purchaser, so long as
10 the eligible entity has not caused or contributed
11 to a release or threatened release of a haz-
12 ardous substance at the property.”.

13 **SEC. 8. INCREASED FUNDING FOR REMEDIATION GRANTS.**

14 Section 104(k)(3)(A)(ii) of the Comprehensive Envi-
15 ronmental Response, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9604(k)(3)(A)(ii)) is amended by strik-
17 ing “\$200,000 for each site to be remediated” and insert-
18 ing “\$500,000 for each site to be remediated, which limit
19 may be waived by the Administrator, but not to exceed
20 a total of \$650,000 for each site, based on the anticipated
21 level of contamination, size, or ownership status of the
22 site”.

1 **SEC. 9. MULTIPURPOSE BROWNFIELDS GRANTS.**

2 Section 104(k) of the Comprehensive Environmental
3 Response, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9604(k)) is amended—

5 (1) by redesignating paragraphs (4) through
6 (12) as paragraphs (5) through (13), respectively;

7 (2) in paragraph (3)(A), in the matter pre-
8 ceding clause (i), by striking “Subject to paragraphs
9 (4) and (5)” and inserting “Subject to paragraphs
10 (5) and (6)”;

11 (3) by inserting after paragraph (3) the fol-
12 lowing:

13 “(4) MULTIPURPOSE BROWNFIELDS GRANTS.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (D) and paragraphs (5) and (6), the Ad-
16 ministrator shall establish a program to provide
17 multipurpose grants to an eligible entity based
18 on the criteria under subparagraph (C) and the
19 considerations under paragraph (3)(C), to carry
20 out inventory, characterization, assessment,
21 planning, or remediation activities at 1 or more
22 brownfield sites in an area proposed by the eli-
23 gible entity.

24 “(B) GRANT AMOUNTS.—

1 “(i) INDIVIDUAL GRANT AMOUNTS.—

2 Each grant awarded under this paragraph
3 shall not exceed \$1,000,000.

4 “(ii) CUMULATIVE GRANT

5 AMOUNTS.—The total amount of grants
6 awarded for each fiscal year under this
7 paragraph may not exceed 15 percent of
8 the funds made available for the fiscal year
9 to carry out this subsection.

10 “(C) CRITERIA.—In awarding a grant

11 under this paragraph, the Administrator shall
12 consider the extent to which the eligible entity
13 is able—

14 “(i) to provide an overall plan for re-
15 vitalization of the 1 or more brownfield
16 sites in the proposed area in which the
17 multipurpose grant will be used;

18 “(ii) to demonstrate a capacity to con-
19 duct the range of eligible activities that
20 will be funded by the multipurpose grant;
21 and

22 “(iii) to demonstrate that a multipur-
23 pose grant will meet the needs of the 1 or
24 more brownfield sites in the proposed area.

1 “(D) CONDITION.—As a condition of re-
2 ceiving a grant under this paragraph, each eli-
3 gible entity shall expend the full amount of the
4 grant by not later than the date that is 5 years
5 after the date on which the grant is awarded to
6 the eligible entity, unless the Administrator pro-
7 vides an extension.

8 “(E) OWNERSHIP.—An eligible entity that
9 receives a grant under this paragraph may not
10 expend any of the grant funds for the remedi-
11 ation of a brownfield site unless the eligible en-
12 tity owns the brownfield site.”; and

13 (4) by striking “paragraph (2) or (3)” each
14 place it appears and inserting “paragraph (2), (3),
15 or (4)”.

16 **SEC. 10. ALLOWING ADMINISTRATIVE COSTS FOR GRANT**
17 **RECIPIENTS.**

18 Paragraph (5) of section 104(k) of the Comprehen-
19 sive Environmental Response, Compensation, and Liabil-
20 ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by
21 section 9 of this Act) is amended—

22 (1) by amending subparagraph (B) to read as
23 follows:

1 “(B) PROHIBITION.—No part of a grant or
2 loan under this subsection may be used for the
3 payment of—

4 “(i) a penalty or fine;

5 “(ii) a Federal cost-share require-
6 ment;

7 “(iii) a response cost at a brownfield
8 site for which the recipient of the grant or
9 loan is potentially liable under section 107;
10 or

11 “(iv) a cost of compliance with any
12 Federal law (including a Federal law speci-
13 fied in section 101(39)(B)), excluding the
14 cost of compliance with laws applicable to
15 the cleanup.”; and

16 (2) by adding at the end the following:

17 “(E) ADMINISTRATIVE COSTS.—

18 “(i) IN GENERAL.—An eligible entity
19 may use up to 5 percent of the amounts
20 made available under a grant or loan
21 under this subsection for administrative
22 costs.

23 “(ii) RESTRICTION.—For purposes of
24 clause (i), the term ‘administrative costs’
25 does not include—

1 “(I) investigation and identifica-
2 tion of the extent of contamination of
3 a brownfield site;

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

6 “(III) monitoring of a natural re-
7 source.”.

8 **SEC. 11. GRANT APPLICATIONS.**

9 (a) WATERFRONT BROWNFIELDS GRANTS; CLEAN
10 ENERGY ON BROWNFIELD SITES.—Paragraph (6)(C) of
11 section 104(k) of the Comprehensive Environmental Re-
12 sponse, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9604(k)) (as redesignated by section 9 of this Act)
14 is amended by adding at the end the following:

15 “(xi) The extent to which a grant
16 would address a site adjacent to a body of
17 water or a federally designated flood plain.

18 “(xii) The extent to which a grant
19 would facilitate—

20 “(I) the location at a brownfield
21 site of a facility that generates renew-
22 able electricity from wind, solar, or
23 geothermal energy; or

24 “(II) any energy efficiency im-
25 provement project at a brownfield site,

1 including a project for a combined
2 heat and power system or a district
3 energy system.”.

4 (b) REPORT ON RANKING CRITERIA.—Paragraph (6)
5 of section 104(k) of the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9604(k)) (as redesignated by section 9 of this Act)
8 is amended by adding at the end the following:

9 “(D) REPORT ON RANKING CRITERIA.—
10 Not later than September 30, 2022, the Admin-
11 istrator shall submit to Congress a report re-
12 garding the Administrator’s use of the ranking
13 criteria described in subparagraph (C) in
14 awarding grants under this subsection.”.

15 **SEC. 12. AUDITS.**

16 Paragraph (8) of section 104(k) of the Comprehen-
17 sive Environmental Response, Compensation, and Liabil-
18 ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by
19 section 9 of this Act) is amended by striking “3 years after
20 the date of the enactment of this subsection” and inserting
21 “September 30, 2022”.

22 **SEC. 13. BROWNFIELDS FUNDING.**

23 Paragraph (13) of section 104(k) of the Comprehen-
24 sive Environmental Response, Compensation, and Liabil-

1 ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by
2 section 9 of this Act) is amended to read as follows:

3 “(13) AUTHORIZATION OF APPROPRIATIONS.—

4 There is authorized to be appropriated to carry out
5 this subsection \$200,000,000 for each of fiscal years
6 2019 through 2023.”.

7 **SEC. 14. SMALL COMMUNITY TECHNICAL ASSISTANCE**
8 **GRANTS.**

9 (a) IN GENERAL.—Section 128(a)(1)(B) of the Com-
10 prehensive Environmental Response, Compensation, and
11 Liability Act of 1980 (42 U.S.C. 9628(a)(1)(B)) is
12 amended—

13 (1) in clause (ii)—

14 (A) in subclause (I), by striking “; or” and
15 inserting a semicolon;

16 (B) in subclause (II), by striking the pe-
17 riod at the end and inserting “; or”; and

18 (C) by adding at the end the following:

19 “(III) assist small communities,
20 Indian tribes, rural areas, or dis-
21 advantaged areas in carrying out ac-
22 tivities described in section
23 104(k)(7)(A) with respect to
24 brownfield sites.”; and

25 (2) by adding at the end the following:

1 “(iii) SMALL COMMUNITIES, INDIAN
2 TRIBES, RURAL AREAS, AND DISADVAN-
3 TAGED AREAS.—

4 “(I) IN GENERAL.—To make
5 grants to States or Indian tribes
6 under clause (ii)(III), the Adminis-
7 trator may use, in addition to
8 amounts available to carry out this
9 subsection, not more than \$1,500,000
10 of the amounts made available to
11 carry out section 104(k)(7) in each
12 fiscal year.

13 “(II) LIMITATION.—Each grant
14 made under subclause (I) may be not
15 more than \$20,000.

16 “(III) INCLUSION IN OTHER
17 GRANTS.—The Administrator may, at
18 the request of a State or Indian tribe,
19 include a grant under this clause in
20 any other grant to the State or Indian
21 tribe made under this subsection.

22 “(iv) DEFINITIONS.—In this subpara-
23 graph:

24 “(I) DISADVANTAGED AREA.—
25 The term ‘disadvantaged area’ means

1 a community with an annual median
2 household income that is less than 80
3 percent of the statewide annual me-
4 dian household income, as determined
5 by the President based on the latest
6 available decennial census.

7 “(II) SMALL COMMUNITY.—The
8 term ‘small community’ means a com-
9 munity with a population of not more
10 than 15,000 individuals, as deter-
11 mined by the President based on the
12 latest available decennial census.”.

13 (b) CONFORMING AMENDMENT.—Section 104(g)(1)
14 of the Comprehensive Environmental Response, Com-
15 pensation, and Liability Act of 1980 (42 U.S.C.
16 9604(g)(1)) is amended by inserting “or section
17 128(a)(1)(B)(ii)(III)” after “under this section”.

18 **SEC. 15. STATE RESPONSE PROGRAM FUNDING.**

19 Section 128(a)(3) of the Comprehensive Environ-
20 mental Response, Compensation, and Liability Act of
21 1980 (42 U.S.C. 9628(a)(3)) is amended to read as fol-
22 lows:

23 “(3) FUNDING.—There is authorized to be ap-
24 propriated to carry out this subsection \$50,000,000
25 for each of fiscal years 2019 through 2023.”.