

BUILD ACT OUTLINE AND SUMMARY

April 4, 2018

(by Sustainable Strategies DC, a KSU TAB Partner)

Section 1: Title is “Brownfields Utilization, Investment, and Local Development Act of 2018”

Section 2, “Redevelopment Certainty for Governmental Entities”: Clarifies “involuntary acquisition” language of CERCLA with respect to the definition of an “owner or operator” for PRP status from:

“The term ‘owner or operator’ does not include a unit of State or local government which acquired ownership or control involuntarily through 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 of its function as sovereign.”

To:

“The term ‘owner or operator’ does not include a unit of State or local government which acquired ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign.”

Provision still includes:

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.

Key issue: takes out the word “involuntarily”. For background see:

<https://www.smartgrowthamerica.org/app/legacy/documents/brownfields-public-liability-white-paper.pdf>.

Section 3, “Alaska Native Village and Native Corporation Relief”: Excludes from the “owner or operator” PRP status a native village or corporation that receives a facility conveyed by the Alaska Native Claims Settlement Act,” unless the Native entity causes or contributes to a release.

Section 4, “Petroleum Brownfield Enhancement”: Changes the definition of a petroleum site classified as a “brownfield” by dropping the requirement that EPA or the State determine that the petroleum site be “of relatively low risk, as compared with other petroleum-only sites in the State” and slightly clarifies the requirement that the petroleum-only site have no viable PRP and will be addressed by a non-PRP.

Section 5, “Prospective Purchasers & Lessees”: Changes definition of BFPP with respect to having “No Affiliation” with a PRP by adding the following underlined text:

“The person is not . . . potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through . . . 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) . . .

Section 5 further provides a lengthy definition and clarification of how a leasehold tenant can obtain BFPP protections.

Section 6, “Expanded Eligibility for Nonprofit Organizations”: Expands an “eligible entity” for EPA brownfields grant funding to include 501(c)(3)’s and “qualified community development entities”.

Section 7, “Treatment of Certain Publicly Owned Brownfield Sites”: Allows a local government to qualify for EPA brownfield grant funding, even if it cannot show BFPP status with respect to a property acquired prior to the 2002 brownfield act, “so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.” For background, see e.g. <http://www.nemw.org/wp-content/uploads/2015/06/2009-Overcoming-Impediments-to-Pub-Agency-Acquisitions.pdf>

Section 8, “Increased Funding for Remediation Grants”: Allows EPA to give cleanup grants of up to \$500,000, or up to \$650,000 if limit waived by EPA based on “anticipated level of contamination, size, or ownership status of the site.”

Section 9, “Multipurpose Brownfield Grants”: Requires EPA to establish a Multipurpose grant program to provide grants of up to \$1 million “to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in an area”. Judging criteria for these multipurpose awards include the “overall plan” for the area brownfields revitalization, a capacity to conduct all the multipurpose activities, and to demonstrate that the grant will meet the needs of 1 more brownfield sites. Must spend the multipurpose grant in five years. Eligible entity/grantee must own site to use cleanup funds.

Section 10, “Allowing Administrative Costs for Grant Recipients”: Allows up to 5% of the EPA grant to be used for administrative costs.

Section 11, “Grant Applications”: Adds ranking criteria for EPA grant applications including waterfront and floodplain brownfields, and brownfield projects involving renewable energy and energy efficiency projects including district energy and CHP projects. Requires EPA to submit a report to Congress by September 30, 2022 on how these ranking criteria worked.

Section 12, “Audits”: Clarifies date by which EPA’s IG must submit a report to Congress on the management of the brownfields program to September 30, 2022.

Section 13, “Brownfields Funding”: Authorizes \$200M annually from 2019-2023

Section 14, “Small Community Technical Assistance Grants”: Provides that States may use their EPA Section 128 grants “to assist small communities, Indian tribes, rural areas, or disadvantaged areas” on brownfields. Allows EPA to use up to \$1.5M annually to provide grants of up to \$20k each to small, Indian, rural and disadvantaged areas” (and allows those grants to be given in combo with other brownfield grants). “Disadvantaged” means “a community with an annual median household income that is less than 80 percent of the statewide annual median household income”, and “small” means a community of 15,000 or less.

Section 15, “State Response Program Funding”: Authorizes \$50M annually from 2019-2023 for the State Section 128 program.