

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

S. 822

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to modify provisions relating to grants, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by

Viz: *MR. MARKEY, MR. SULLIVAN, MR. BARRASSO, MR. CARPER, MR. INHOFE, MR. BOOKER, MR. WHITEHOUSE*

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brownfields Utilization, Investment, and Local Development Act of 2017” or
5 the “BUILD Act”.
6

7 **SEC. 2. EXPANDED ELIGIBILITY FOR NONPROFIT ORGANIZATIONS.**
8

9 Section 104(k)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9604(k)(1)) is amended—
11

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

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

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

6 “(I) an organization described in section
7 501(c)(3) of the Internal Revenue Code of 1986
8 and exempt from taxation under section 501(a)
9 of that Code;

10 “(J) a limited liability corporation in which
11 all managing members are organizations de-
12 scribed in subparagraph (I) or limited liability
13 corporations whose sole members are organiza-
14 tions described in subparagraph (I);

15 “(K) a limited partnership in which all
16 general partners are organizations described in
17 subparagraph (I) or limited liability corpora-
18 tions whose sole members are organizations de-
19 scribed in subparagraph (I); or

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

1 **SEC. 3. 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 (9) and (10) through (12) as paragraphs (5)
7 through (10) and (13) through (15), respectively;

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

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

14 “(4) MULTIPURPOSE BROWNFIELDS GRANTS.—

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

23 “(B) GRANT AMOUNTS.—

24 “(i) INDIVIDUAL GRANT AMOUNTS.—

25 Each grant awarded under this paragraph
26 shall not exceed \$950,000.

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

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

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

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

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

22 “(D) CONDITION.—As a condition of re-
23 ceiving a grant under this paragraph, each eli-
24 gible entity shall expend the full amount of the
25 grant not later than the date that is 3 years

1 after the date on which the grant is awarded to
2 the eligible entity unless the Administrator, in
3 the discretion of the Administrator, provides an
4 extension.”.

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

7 Section 104(k)(2) of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9604(k)(2)) is amended by adding at the
10 end the following:

11 “(C) EXEMPTION FOR CERTAIN PUBLICLY
12 OWNED BROWNFIELD SITES.—Notwithstanding
13 any other provision of law, an eligible entity
14 that is a governmental entity may receive a
15 grant under this paragraph for property ac-
16 quired by that governmental entity prior to
17 January 11, 2002, even if the governmental en-
18 tity does not qualify as a bona fide prospective
19 purchaser (as that term is defined in section
20 101(40)), so long as the eligible entity has not
21 caused or contributed to a release or threatened
22 release of a hazardous substance at the prop-
23 erty.”.

1 **SEC. 5. INCREASED FUNDING FOR REMEDIATION GRANTS.**

2 Section 104(k)(3)(A)(ii) of the Comprehensive Envi-
3 ronmental Response, Compensation, and Liability Act of
4 1980 (42 U.S.C. 9604(k)(3)(A)(ii)) is amended by strik-
5 ing “\$200,000 for each site to be remediated” and insert-
6 ing “\$500,000 for each site to be remediated, which limit
7 may be waived by the Administrator, but not to exceed
8 a total of \$650,000 for each site, based on the anticipated
9 level of contamination, size, or ownership status of the
10 site”.

11 **SEC. 6. ALLOWING ADMINISTRATIVE COSTS FOR GRANT**
12 **RECIPIENTS.**

13 Paragraph (5) of section 104(k) of the Comprehen-
14 sive Environmental Response, Compensation, and Liabil-
15 ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by
16 section 3(1)) is amended—

17 (1) in subparagraph (B)—

18 (A) in clause (i)—

19 (i) by striking subclause (III); and

20 (ii) by redesignating subclauses (IV)

21 and (V) as subclauses (III) and (IV), re-
22 spectively;

23 (B) by striking clause (ii);

24 (C) by redesignating clause (iii) as clause

25 (ii); and

1 (D) in clause (ii) (as redesignated by sub-
2 paragraph (C)), by striking “Notwithstanding
3 clause (i)(IV)” and inserting “Notwithstanding
4 clause (i)(III)”;

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

6 “(E) ADMINISTRATIVE COSTS.—

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

12 “(ii) RESTRICTION.—For purposes of
13 clause (i), the term ‘administrative costs’
14 does not include—

15 “(I) investigation and identifica-
16 tion of the extent of contamination;

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

19 “(III) monitoring of a natural re-
20 source.”.

21 **SEC. 7. SMALL COMMUNITY TECHNICAL ASSISTANCE**
22 **GRANTS.**

23 Paragraph (7)(A) of section 104(k) of the Com-
24 prehensive Environmental Response, Compensation, and

1 Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesi-
2 gated by section 3(1)) is amended—

3 (1) by striking “The Administrator may pro-
4 vide,” and inserting the following:

5 “(i) DEFINITIONS.—In this subpara-
6 graph:

7 “(I) DISADVANTAGED AREA.—

8 The term ‘disadvantaged area’ means
9 an area with an annual median house-
10 hold income that is less than 80 per-
11 cent of the statewide annual median
12 household income, as determined by
13 the latest available decennial census.

14 “(II) SMALL COMMUNITY.—The

15 term ‘small community’ means a com-
16 munity with a population of not more
17 than 15,000 individuals, as deter-
18 mined by the latest available decennial
19 census.

20 “(ii) ESTABLISHMENT OF PRO-

21 GRAM.—The Administrator shall establish
22 a program to provide grants that pro-
23 vide,”; and

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

1 “(iii) SMALL OR DISADVANTAGED
2 COMMUNITY RECIPIENTS.—

3 “(I) IN GENERAL.—Subject to
4 subclause (II), in carrying out the
5 program under clause (ii), the Admin-
6 istrator shall use not more than
7 \$600,000 of the amounts made avail-
8 able to carry out this paragraph to
9 provide grants to States that receive
10 amounts under section 128(a) to as-
11 sist small communities, Indian tribes,
12 rural areas, or disadvantaged areas in
13 achieving the purposes described in
14 clause (ii).

15 “(II) LIMITATION.—Each grant
16 awarded under subclause (I) shall be
17 not more than \$7,500.”.

18 **SEC. 8. WATERFRONT BROWNFIELDS GRANTS.**

19 Section 104(k) of the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9604(k)) is amended by inserting after paragraph
22 (10) (as redesignated by section 3(1)) the following:

23 “(11) WATERFRONT BROWNFIELD SITES.—

24 “(A) DEFINITION OF WATERFRONT
25 BROWNFIELD SITE.—In this paragraph, the

1 term 'waterfront brownfield site' means a
2 brownfield site that is adjacent to a body of
3 water or a federally designated floodplain.

4 "(B) REQUIREMENTS.—In providing
5 grants under this subsection, the Administrator
6 shall—

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

10 "(ii) give consideration to waterfront
11 brownfield sites."

12 **SEC. 9. CLEAN ENERGY BROWNFIELDS GRANTS.**

13 Section 104(k) of the Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9604(k)) (as amended by section 8) is amended
16 by inserting after paragraph (11) the following:

17 "(12) CLEAN ENERGY PROJECTS AT
18 BROWNFIELD SITES.—

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

22 "(i) a facility that generates renew-
23 able electricity from wind, solar, or geo-
24 thermal energy; and

1 “(ii) any energy efficiency improve-
2 ment project at a facility, including com-
3 bined heat and power and district energy.

4 “(B) ESTABLISHMENT.—The Adminis-
5 trator shall establish a program to provide
6 grants—

7 “(i) to eligible entities to carry out in-
8 ventory, characterization, assessment,
9 planning, feasibility analysis, design, or re-
10 mediation activities to locate a clean en-
11 ergy project at 1 or more brownfield sites;
12 and

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

16 “(C) MAXIMUM AMOUNT.—A grant under
17 this paragraph shall not exceed \$500,000.”.

18 **SEC. 10. TARGETED FUNDING FOR STATES.**

19 Paragraph (15) of section 104(k) of the Comprehen-
20 sive Environmental Response, Compensation, and Liabil-
21 ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by
22 section 3(1)) is amended by adding at the end the fol-
23 lowing:

24 “(C) TARGETED FUNDING.—Of the
25 amounts made available under subparagraph

1 (A) for a fiscal year, the Administrator may use
2 not more than \$2,000,000 to provide grants to
3 States for purposes authorized under section
4 128(a), subject to the condition that each State
5 that receives a grant under this subparagraph
6 shall have used at least 50 percent of the
7 amounts made available to that State in the
8 previous fiscal year to carry out assessment and
9 remediation activities under section 128(a).”.

10 **SEC. 11. CLARIFICATION OF OWNER OR OPERATOR.**

11 (a) ACQUISITION BY STATE OR LOCAL GOVERNMENT
12 AS SOVEREIGN.—

13 (1) OWNER OR OPERATOR.—Section 101(20) of
14 the Comprehensive Environmental Response, Com-
15 pensation, and Liability Act of 1980 (42 U.S.C.
16 9601(20)) is amended—

17 (A) in subparagraph (A), in the first sen-
18 tence, by striking “due to bankruptcy” and all
19 that follows through “local government,” and
20 inserting “to a unit of State or local govern-
21 ment through seizure or otherwise in connection
22 with law enforcement activity; through bank-
23 ruptcy, tax delinquency, abandonment, or es-
24 cheat; through any other involuntary transfer
25 or acquisition; through the exercise of eminent

1 domain authority by purchase or condemnation;
2 or through other circumstances in which the
3 unit of State or local government acquires title
4 by virtue of its function as a sovereign,”;

5 (B) in subparagraph (C), by striking “sec-
6 tion 107(a)(3) or (4)” and inserting “para-
7 graph (3) or (4) of section 107(a),”; and

8 (C) in subparagraph (D), in the first sen-
9 tence, by striking “which acquired” and all that
10 follows through “by virtue” and inserting “that
11 acquired ownership or control through seizure
12 or otherwise in connection with law enforcement
13 activity; through bankruptcy, tax delinquency,
14 abandonment, or escheat; through any other in-
15 voluntary transfer or acquisition; through the
16 exercise of eminent domain authority by pur-
17 chase or condemnation; or through other cir-
18 cumstances in which the government acquires
19 title by virtue”.

20 (2) CONTRACTUAL RELATIONSHIP.—Section
21 101(35)(A) of the Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980
23 (42 U.S.C. 9601(35)(A)) is amended—

1 (A) in the matter preceding clause (i), by
2 striking “clause (i), (ii), or (iii)” and inserting
3 “clause (i) or (ii)”;

4 (B) by striking clause (ii); and

5 (C) by redesignating clause (iii) as clause
6 (ii).

7 (b) ALASKA NATIVE VILLAGE AND NATIVE COR-
8 PORATION RELIEF.—Section 101(20) of the Comprehen-
9 sive Environmental Response, Compensation, and Liabil-
10 ity Act of 1980 (42 U.S.C. 9601(20)) is amended—

11 (1) by redesignating subparagraphs (E)
12 through (G) as subparagraphs (F) through (H), re-
13 spectively, and indenting appropriately;

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

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

18 “(i) IN GENERAL.—The term ‘owner
19 or operator’ does not include—

20 “(I) a Native village or Native
21 Corporation (as those terms are de-
22 fined in section 3 of the Alaska Native
23 Claims Settlement Act (43 U.S.C.
24 1602)) that received a contaminated
25 facility from the United States Gov-

1 ernment under that Act (43 U.S.C.
2 1601 et seq.); or

3 “(II) a successor in interest to a
4 contaminated facility referred to in
5 subclause (I) that was conveyed to the
6 successor in interest under section
7 14(e) of that Act (43 U.S.C. 1613(e)).

8 “(ii) APPLICABILITY.—Clause (i) does
9 not apply to any Native village, Native
10 Corporation, or successor in interest that
11 has caused or contributed to the release or
12 threatened release of a hazardous sub-
13 stance from a contaminated facility re-
14 ferred to in that clause.

15 “(iii) LIABILITY.—Any Native village,
16 Native Corporation, or successor in inter-
17 est that causes or contributes to the re-
18 lease or threatened release of a hazardous
19 substance from a contaminated facility re-
20 ferred to in clause (i) shall be subject to
21 the provisions of this Act in the same man-
22 ner and to the same extent, procedurally
23 and substantively, as any nongovernmental
24 entity, including liability under section
25 107.”;

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 (c) PROSPECTIVE PURCHASERS AND LESSEES.—

9 (1) BONA FIDE PROSPECTIVE PURCHASER.—
10 Section 101(40) of the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act
12 of 1980 (42 U.S.C. 9601(40)) is amended—

13 (A) in subparagraph (B)—

14 (i) by redesignating clauses (i)
15 through (iii) as subclauses (I) through
16 (III), respectively, and indenting appro-
17 priately;

18 (ii) in subclause (I) (as so redesign-
19 ated), by striking “clauses (ii) and (iii)”
20 and inserting “subclauses (II) and (III)”;

21 (iii) in subclause (II) (as so redesign-
22 ated), by striking “subparagraph” and in-
23 serting “clause”; and

1 (iv) in subclause (III) (as so redesignig-
2 nated), by striking “subparagraph” and in-
3 serting “clause”;

4 (B) in subparagraph (D), by redesignating
5 clauses (i) through (iii) as subclauses (I)
6 through (III), respectively, and indenting ap-
7 propriately;

8 (C) in subparagraph (F), by redesignating
9 clauses (i) and (ii) as subclauses (I) and (II),
10 respectively, and indenting appropriately;

11 (D) in subparagraph (H)—

12 (i) in clause (i)—

13 (I) in subclause (II), by inserting
14 “, by a tenancy, by the instruments
15 by which a leasehold interest in the
16 facility is created,” after “financed”;
17 and

18 (II) by redesignating subclauses
19 (I) and (II) as items (aa) and (bb),
20 respectively, and indenting appro-
21 priately; and

22 (ii) by redesignating clauses (i) and
23 (ii) as subclauses (I) and (II), respectively,
24 and indenting appropriately;

1 (E) by redesignating subparagraphs (B)
2 through (H) as clauses (ii) through (viii), re-
3 spectively, and indenting appropriately;

4 (F) by striking the paragraph designation
5 and heading and all that follows through “All
6 disposal of” in subparagraph (A) and inserting
7 the following:

8 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

9 “(A) IN GENERAL.—The term ‘bona fide
10 prospective purchaser’ means—

11 “(i) a person that—

12 “(I) after January 11, 2002, ac-
13 quires ownership of a facility; and

14 “(II) establishes by a preponder-
15 ance of the evidence each of the cri-
16 teria described in clauses (i) through
17 (viii) of subparagraph (B);

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

20 “(iii) a tenant of a person that—

21 “(I) formerly met the criteria de-
22 scribed in clause (i) but no longer
23 meets that criteria due to a factor un-
24 related to any action of the tenant;
25 and

1 “(II) establishes by a preponder-
2 ance of the evidence each of the cri-
3 teria described in clauses (i), (iii),
4 (iv), (v), (vi), (vii), and (viii) of sub-
5 paragraph (B); and

6 “(iv) a person that—

7 “(I) holds a leasehold interest in
8 a facility; and

9 “(II) establishes by a preponder-
10 ance of the evidence each of the cri-
11 teria described in clauses (i) through
12 (viii) of subparagraph (B).

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

15 “(i) DISPOSAL PRIOR TO ACQUI-
16 TION.—All disposal of”; and

17 (G) by adding at the end the following:

18 “(C) SPECIAL RULE.—With respect to a
19 facility, in any case in which the ownership or
20 operational control held by a person is estab-
21 lished by a tenancy or lease, the person shall be
22 considered to be a bona fide prospective pur-
23 chaser only if the person establishes by a pre-
24 ponderance of the evidence that the tenancy or

1 lease is not designed to avoid liability under
2 this Act by any person that—

3 “(i) does not meet the criteria applica-
4 ble to that person under subparagraph
5 (B); or

6 “(ii) is liable under paragraph (3) or
7 (4) of section 107(a).”.

8 (2) LIMITATION ON LIABILITY.—Section
9 107(r)(1) of the Comprehensive Environmental Re-
10 sponse, Compensation, and Liability Act of 1980 (42
11 U.S.C. 9607(r)(1)) is amended by striking “pur-
12 chaser’s” and inserting “bona fide prospective pur-
13 chaser”.

14 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) BROWNFIELDS REVITALIZATION FUNDING.—
16 Paragraph (15)(A) 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 3(1)) is amended by striking “2006” and inserting
20 “2020”.

21 (b) STATE RESPONSE PROGRAMS.—Section
22 128(a)(3) of the Comprehensive Environmental Response,
23 Compensation, and Liability Act of 1980 (42 U.S.C.
24 9628(a)(3)) is amended by striking “2006” and inserting
25 “2020”.